NORTH DAKOTA BANKERS ASSOCIATION

LEGAL UPDATE

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ACCOUNTS

Ambiguous Contract Provisions? No Summary Judgment [11TH CIR]

The debtor accepted a new position as a financial advisor with a bank. As part of his contract, the bank agreed to lend the debtor funds as an inducement to join the bank. The debtor promised to repay the loan within the first ten years of his employment, or immediately if he left his position before then. The debtor deposited the loan into an account he held jointly with his wife (the "joint account"). The joint account was governed by the bank's client relationship agreement, which allegedly granted the bank a security interest and lien in the account "[a]s 'security for the payment of all liabilities or indebtedness presently outstanding or to be incurred under this or any other agreement..." The agreement further provided that "the account holders [were] jointly and severally liable for all obligations with respect to the [a]ccount." Shortly after the debtor signed with the bank, he was exposed for mishandling client funds, legally barred from working in the financial services industry, and fired by the bank. The debtor did not return the loaned funds and filed for bankruptcy. The debtor listed the joint account as "exempt from the bankruptcy estate as a tenancy by the entireties, which protected his wife's interest in it under Florida law." The bank proceeded to freeze the account, asserting it had a valid lien. The debtor then filed an adversary complaint against the bank, seeking, in relevant part, (1} a declaratory judgment that the joint account was exempt from the bankruptcy estate as a tenancy by the entireties, and (2) a declaration that the bank lacked a valid security interest, lien, or right of setoff against the joint account. The bank responded with four counterclaims: (1) a declaratory action to clarify that the bank had a perfected security interest in the joint account under New York law; (2) a fraudulent transfer claim for the return of the loan funds; (3) a contractual setoff claim under federal law; and (4) a common law setoff claim. The debtor moved for summary judgment on all claims and counterclaims. The bankruptcy court entered summary judgment in favor of the debtor on all claims and the district court affirmed. The bank appealed.

In **Esteva v. UBS Fin. Servs., Inc. (In re Esteva),** No. 23-14050, 2025 WL 2171062, 2025 U.S. App. LEXIS 19228 (11th Cir. 2025) (unpublished opinion), the Eleventh Circuit reversed summary judgment in favor of the debtor on the tenancy by the entireties and lien claims, and on the bank's constructive-intent fraudulent transfer counterclaim. Additionally, the court affirmed summary judgment in favor of the debtor on the bank's actual intent, fraudulent transfer, and setoff claims. First, the court considered the lien and tenancy by the entireties claims. The court explained that New York law governed the interpretation of the agreement's provisions, while Florida law governed the joint account itself. Under New York law, when a contract's provisions are ambiguous, "a question of fact is presented which cannot be resolved on a motion for summary judgment." W Grp. Nurseries, Inc. v. Ergas, 167 F.3d 1354, 1360 (11th Cir. 1999). Under Florida law, because the joint account is a tenancy by the entirety, the bank could not recover the debtor's funds. Instead, the court had to determine whether the debtor granted a lien on the joint account under the agreement, and if he did, how that lien affected his wife's rights to the account. The court looked specifically to the provisions of the agreement between the debtor and the bank and found several ambiguous terms. Specifically, the court looked to what the agreement meant by using the word "you." The debtor argued that the word should be interpreted as singular; however, the court also found that the word "you" could be interpreted to include the debtor's wife. Similarly, the meaning of the word "obligations" was likely ambiguous; the court noted it was unclear whether it meant paying fees or extended to obligations such as promissory notes held by the bank. There also remained a question of whether the wife was liable to the bank by signing the agreement. Therefore, because of ambiguities in the agreement, the court ruled that summary judgment was improper as to the lien and tenancy by the entireties claims, because the ambiguities created a factual dispute that the court could not resolve at the summary judgment stage. Next, the court considered the bank's actual intent and constructive intent fraudulent transfer claims. The court concluded that the bank waived its actual intent fraudulent transfer claim by failing to defend its theory in its response to the debtor's summary judgment motion. However, the court found a genuine dispute of material fact regarding the bank's constructive intent fraudulent transfer claim. Florida state law has two relevant statutes: (1) constructive fraudulent transfer occurs when a debtor does not receive "a reasonably equivalent value in exchange for a transfer or obligation," and (2) a transfer or obligation is fraudulent if made when the debtor was insolvent and did not receive reasonably equivalent value in exchange. Fla. Stat. Section 726.105(1)(b). The court held that the bank presented enough evidence under both statutes to continue with its constructive intent fraudulent transfer claim. Lastly, the court affirmed the dismissal of the bank's setoff counterclaims. In both setoff claims, the bank pleaded the applicability of§ 553 of the bankruptcy code, but that section does not create a right to setoff. The bank had failed to identify substantive law granting the right to setoff, which was required to avoid dismissal. Therefore, the court affirmed summary judgment in part and reversed in part.

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BANKING REGULATION

Fifth Circuit Upholds OCC Enforcement as Constitutional and Timely [5TH CIR]

Several bank employees (the "employees") occupied prominent positions at the bank following the 2008 financial crisis, while the bank struggled to remain solvent. The employees implemented several strategies to keep the bank open, but each effort failed, and the bank ultimately closed. After the bank's closure, the Office of the Comptroller of the Currency (OCC), initiated an enforcement action alleging the employees "(1) engaged in unsafe and unsound banking practices, (2) breached their fiduciary duties, and (3) filed materially inaccurate reports." An administrative law judge (ALJ) heard the case after the OCC reassigned it to another ALJ judge in light of Lucia v. SEC, 585 U.S. 237 (2018). The OCC adopted almost all the ALJ's recommendations. However, the ALJ found that the OCC's enforcement counsel failed to meet its burden to ban the employees from working in the financial industry. But the Comptroller determined otherwise and imposed the ban. The OCC's order imposed civil penalties and prohibited each of the employees from working in the financial industry. The employees appealed to the Fifth Circuit. On appeal, the employees raised six issues: (1) whether the enforcement action violated their Seventh Amendment right to a jury trial, (2) whether the appointment of the new ALJ was valid, (3) whether the statute of limitations barred the OCC's enforcement action, (4) whether the ALJ and OCC issued improper evidentiary rulings, (5) whether the OCC presented substantial evidence to justify a prohibition order, and (6) whether the correct evidentiary standard was used in prohibition cases.

In **Ortega v. Off. of the Comptroller of the Currency**, 155 F.4th 394, (5th Cir. 2025), the court denied the employees' petition for review and affirmed the finding of the OCC, upholding the employee's liability for civil penalties and their prohibition from working in finance. First, the court addressed the employees' contention that the OCC denied their right to a jury trial. The court concluded that the OCC did not violate the employees' right to jury trial because the OCC's enforcement action fell within the public rights exception. Courts apply the public rights exception narrowly because the exception only relates to areas where matters "historically could have been determined exclusively by [the executive and legislative] branches," rather than Article III courts. Stern v. Marshall, 564 U.S. 462,485 (2011). The court held the public rights exception applied because the OCC's enforcement action did not regulate private rights but rather regulated the banking system at large. The court emphasized the legislative history of state and nationally chartered banks, specifically how Congress gave enforcement actions to the legislative and executive branches, rather than to the courts. The court noted that not only did the federal government possess an interest in regulating the banks, but that federal law created the entire national banking system, which placed the enforcement action within the public rights exception. Second, the court addressed the appointment of the ALJ. The court held that the Secretary of the Treasury, a properly authorized department head, had appointed the ALJ. Therefore, the appointment was in accordance with Lucia's requirement that only the President, a department head, or a court of law may make these appointments. Third, the court concluded the five-year statute of limitations did not bar the government's enforcement actions. The court clarified that accrual did not occur until the regulator made the determination that the employees' action would probably harm the bank, satisfying the statutory elements of the enforcement action. The court found the enforcement action occurred within the five-year period after the claim accrued. Thus, the action was timely under the applicable five-year limitations period. The circuit court explained that the OCC's decision not to initiate proceedings earlier did not preclude the claims it ultimately asserted. Fourth, the court held neither the ALJ nor the OCC issued any improper evidentiary rulings. Regulations permitted the

ALJ "to avoid undue delay...by refusing to admit repetitive and cumulative evidence." See C.F.R. §§ 19.4-19.5. The court emphasized that substantial evidence existed to justify the OCC's and ALJ's rulings, and that the OCC reviewed all the ALJ's rulings before issuing a final decision. Fifth, the court found that the OCC correctly overturned the ALJ's recommendation not to prohibit the employees from working in finance. The OCC found the employees were "under an obligation to be fully transparent" with the OCC but nevertheless continued to conceal or misrepresent their records. Here, the court found that the OCC sufficiently articulated reasons for removal because the employees' actions were "well beyond mere negligence." See Kim v. OTS, 40 F.3d 1050, 1054 (9th Cir.1994). Lastly, the court reaffirmed that the preponderance of evidence standard governs civil proceedings involving prohibitions because it had already established that this standard is appropriate for a banking regulator under § 1818(e)(l). Therefore, the court denied the employees' contention that the standard should be clear and convincing evidence.

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Section 1818 Bars Review Prior to Final Order in Administrative Proceedings [5TH CIR]

A bank executive sought to halt a Federal Deposit Insurance Corporation (FDIC) enforcement action by filing suit in federal district court before the FDIC Board of Directors (the "board") issued its final order. The FDIC had reopened its administrative case against him after a Supreme Court decision required a rehearing before a properly appointed Administrative Law Judge (ALJ). Lucia v. SEC, 585 U.S. 237 (2018). In response, the executive advanced several claims, including challenges to removal protections for ALJs. He also claimed he had the right to a jury trial under the Seventh Amendment. He invoked 28 U.S.C. § 1331 as a basis for federal-question jurisdiction, arguing that such constitutional claims create an independent jurisdictional foundation allowing review before enforcement happens. The district court rejected the removal arguments but issued an injunction halting the enforcement action on Seventh Amendment grounds. The board appealed, contending that the district court lacked subject-matter jurisdiction to enjoin the proceeding and issue such an injunction, and sought dismissal of the suit in federal court.

In **Burgess v. Whang**, 152 F.4th 579 (5th Cir. 2025), the Fifth Circuit agreed with the board and vacated the injunction. The court reasoned that 12 U.S.C. § 1818 establishes an exclusive enforcement structure. Section 1818(i)(l) expressly stripped district courts of jurisdiction, including federal question subject matter jurisdiction conferred by § 1331, to enjoin FDIC enforcement proceedings before the issuance of a final order, except in narrow statutory circumstances. Section 1818(h)(2) provides the sole path for judicial review, channeling all claims, including constitutional and structural challenges, directly to the courts of appeals after a final agency decision. Congress's deliberate sequencing of enforcement and review, in the eyes of the court, reflected a clear choice to preclude collateral suits before enforcement, even those framed in constitutional terms. Because the executive's suit sought to enjoin an ongoing enforcement action rather than follow the prescribed review process, the district court lacked subject matter jurisdiction and the action had to be dismissed.

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BANKRUPTCY

Dischargeable Debts or the Financial Death Penalty: Challenging Chapter 7 Bankruptcy [5TH CIR]

After the debtor filed for Chapter 7 bankruptcy relief, the creditor filed an adversary proceeding against the debtor. The debtor, as CEO of two companies, an American company and a Hong Kong company, directed the companies to partner on the manufacture and distribution of drones and helicopters. Later, the debtor restructured the American company to create an international group as a parent company to multiple subsidiaries. In 2015, the debtor memorialized the relationships between his various companies and conveyed business assets of the American company to the parent company and a services subsidiary through two agency agreements. The first agency agreement contracted the Hong Kong drone manufacturer as an agent of the parent company. In the second agency agreement, the service subsidiary enlisted the American subsidiary as an agent for North American sales. The agreements required the agent subsidiaries to remit funds to the parent company and the service subsidiary. In 2016, the Walt Disney Company contracted with the debtor's Hong Kong subsidiary to manufacture drones. The creditor extended financing to the parent company for the drones under two loan agreements. The debtor personally guaranteed both financing agreements for the subsidiary. Among other things, the creditor placed a lien on cash deposited into the Hong Kong subsidiary's bank accounts (the "charged accounts"). Additionally, the American subsidiary, pursuant to the loan agreement, transferred its sales proceeds to the charged accounts. During the financing, the creditor also required amendments to the two agency agreements to strengthen the agent-parent relationship, the creditor's perfected lien on the collateral, and payment and transfer practices for the charged accounts. Moreover, the creditor required several side letter agreements, which included progressively "more onerous" financing terms. To obtain faster cash flow, the debtor entered into an additional agreement with another creditor (the "factoring creditor"). Under the factoring agreement, the parent company assigned purchase orders to the factoring creditor in exchange for credit, and the original creditor agreed to subordinate its liens on factored purchase orders. At the maturity date of the loan with the creditor, the debtor emailed the creditor a notice of inability to make its payment. The creditor extended an emergency loan to the debtor, agreed to forbear from declaring default, and extended the maturity date. At that time, the debtor offered all receivables and purchase orders as collateral and reaffirmed its commitment to deposit proceeds into the charged accounts. After the missed payment at the extended maturity date, the creditor sent a formal notice of default to the debtor. The debtor emailed the creditor regarding funds transferred from the charged account to a U.S. account, out of concern that the creditor would freeze the charged account to pay business expenses. The creditors sent a cease and desist notice alongside a notice of breach of contract. When the debtor's companies could no longer pay manufacturers, the debtor entered into a trademark license agreement with another Hong Kong industrial company to manufacture and sell the parent company's goods in exchange for hiring the parent company's employees and paying royalties. The parent company then filed for Chapter 11 bankruptcy, and its subsidiaries soon joined by entering Chapter 7 bankruptcy. The creditor sued the debtor personally in Singapore based on his personal guarantee of the loan, and the court entered judgment against the debtor, causing him to subsequently file for Chapter 7 bankruptcy. The creditor then filed an adversary complaint in the debtor's bankruptcy case, citing sections 523 and 727 of the United States Bankruptcy Code for its claim that the debtor's debt was nondischargeable. At trial, the bankruptcy court initially denied all the creditor's claims. The creditor appealed the holding to the district court and then to the Fifth Circuit on four issues related to statutory exceptions to discharge: (1) that 11 U.S.C. § 727(a)(2)(A) precluded discharge of the debts because the debtor acted with "intent to hinder, delay, or defraud" a creditor when he transferred property within one year before the filing of the bankruptcy petition; (2) that 11 U.S.C. § 727(a)(3) & (a)(7) excluded all of the debt from discharge because the debtor concealed or destroyed information from which the debtor's financial condition might be ascertained; (3) that under 11 U.S.C. § 523(a)(2)(A) the debt was non-dischargeable because the debtor obtained the debt by false representations; and (4) that under 11 U.S.C § 523(a)(6), any debt "for willful and malicious injury by the debtor to another entity" is precluded from discharge.

In **Triumphant Gold Ltd. v. Matloff (In re Matloff)**, No. 24-10439, 2025 WL 2848990, 2025 U.S. App. LEXIS 26219 (5th Cir. Oct. 8, 2025) (opinion not yet released for publication), the court affirmed the district court holdings on all claims except for the § 523(a)(6) claim, which it vacated and remanded for additional proceedings. The court first held that under 11 U.S.C. § 727(a)(2)(A), the debtor lacked actual intent to defraud. The court held constructive intent was insufficient to support a § 727(a)(2)(A) challenge to a bankruptcy discharge, because the debtor felt he "had no other choice" but to transfer the funds to avoid a freeze. Regarding the § 727(a)(2)(A) claim, the court further explained that only very serious dishonesty generally warrants denial of discharge. The court explained that one of the because she alleged that she suffered a higher interest rate on her new mortgage for the Texas home. The court emphasized that the servicer's failure to investigate and correct the inaccurate reporting plausibly caused the higher interest rate on the Texas home. Lastly, the court held that the mortgagor's TDCA claims were time-barred. The statute of limitations on TDCA claims is two years, and the mortgagor first filed the claims in February 2023. Because the alleged misrepresentations occurred in 2020 and the mortgagor filed the original complaint in September 2021, the TDCA claims must relate back to the original pleading to proceed. Fed. R. Civ. P. 15(c)(l)(B). Here, the court opined that the TDCA claim "raised a new theory of deceptive debt collection," which had no relation to the original FCRA claim. Therefore, the court dismissed the TDCAclaim.

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FDIC

FDIC Nonbinding Guidance Creates No Judicially Reviewable Action [8TH CIR]

The banks sued the Federal Deposit Insurance Corporation (FDIC), seeking to invalidate a guidance document issued by the FDIC. The specific guidance document, Financial Institutions Letter 32 ("FIL 32"), addressed non-sufficient funds (NSF) fees, defined as "the charging of additional insufficient funds fees when a transaction is presented for payment multiple times." The letter advised banks that NSF fees can lead to unfair or deceptive trade practices if charged multiple times on transactions without disclosing that practice to their clients. The banks contended that the Administrative Procedure Act (APA) controlled FIL 32 because it forces banks to undertake additional compliance measures and that the agency violated the APA by implementing the rule without notice and comment. The agency argued that FIL 32 did not amount to a final order and only functioned as a non-binding guidance document. The district court dismissed the case, finding that FIL 32 did not qualify as a final agency action and concluded that the banks lacked standing. The banks appealed.

In Minn. Bankers Ass'n v. FDIC, 152 F.4th 893 (8th Cir. 2025), the court affirmed the suit's dismissal, holding the banks' claim was not yet ripe for judicial review. The court emphasized that FIL 32 did not constitute a violation of the APA because it was a non-final agency action that neither compelled action nor prohibited otherwise lawful conduct. The court characterized FIL 32 as a guidance document that merely warns financial institutions of practices that could present risks of unfair and deceptive acts and encourages them to review their own risk-mitigating practices. The court further found that withholding consideration on this case would not negatively affect the government agency because it did not rely on FIL 32 to bring enforcement actions.

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JUDGMENT LIENS

Expired Lien Strips Creditor of Standing in Partition Appeal [TX APP]

The creditor intervened in a partition action to enforce its lien on the debtor's property. The debtor and his extended family purchased the land in 1992 and orally agreed to partition it but did not file any documents with the court. In 2015, members of the debtor's family filed a partition suit to partition their land from the debtor's land because the debtor's prior business ventures resulted in debts owed to the creditor. Specifically, the creditor obtained a judgment and judgment lien on the debtor's property in September 2011 (the "business-debt judgments"). In 2017, the creditor filed a plea of intervention in the partition suit because it held a judgment lien on the property. The case proceeded to trial in 2023, and the trial court held that the creditor had standing because its judgment lien was valid. The debtor and his family appealed.

In **John Deere Constr. & Forestry Co. v. Rodriguez**, No. 14-24-00030-CV, 2025 WL 1461152, 2025 Tex. App. LEXIS 3508 (Tex. App.-Houston [14th Dist.] May 22, 2025) (opinion not yet released for publication), the court dismissed the intervention plea for lack of subject-matter jurisdiction. The court held that although the underlying 2011 money judgment remained valid, the lien created by the recorded abstract of judgment expired in 2021 under Texas Property Code§ 52.006(a). The relevant Texas Property Code statute reads that the "judgment lien continues for 10 years following the date of recording and indexing the abstract." Tex. Prop. Code Ann. § 52.006(a). Additionally, the court rejected the creditor's argument that its intervention in the 2017 partition suit extended or revived the lien, finding no statutory or precedential support. The creditor argued that its intervention occurred before the lien expired and, therefore, its interest vested and could not be extinguished. Olivares v. Birdie L. Nix Trust, 126 S.W.3d 242,250 (Tex. App.-San Antonio 2003, pet. denied). However, the court found that Olivares did not hold "that the filing of an enforcement action extends or tolls the ten-year duration of a judgment lien." Therefore, because the creditor received its lien in 2011 and the trial did not occur until 2023, the creditor lacked a "justiciable interest" in the partition action and thus lacked standing to intervene.

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JURISDICTION

Limits on Federal Court Jurisdiction Under Section 1786 [5TH CIR]

The Texas Credit Union Department placed the credit union into conservatorship and appointed the National Credit Union Administration (NCUA) as the conservator. The NCUA terminated the credit union's CEO (the "employee") and withheld his post-termination benefits. The employee sued the credit union in state court, claiming he was entitled to those benefits. However, before appropriateness of second-tier penalties because of the individual's role in the company and the validity of the use of weekends and holidays in penalty calculation. The court rejected the claims that the penalty was excessive or egregious because of the individual's reckless conduct and direct contribution to the monetary harm caused. Lastly, the court affirmed the denial of the further discovery motion because of the individual's lack of diligence in pursuing discovery and in moving to reopen or modify discovery. To conclude, the court affirmed the district court judgments on all counts.

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FCRA

Mortgagor's Negligent FCRA Claim Survives 12(b)(6) Motion the Rest, not so Lucky [5TH CIR]

The mortgagor purchased a residential home in Arizona with a loan that was assigned to the servicer. The mortgagor made the initial payment in August; however, the payment was unable to be processed, and the mortgagor made a second payment, which was processed. After the first payment was posted, the mortgagor requested that the bank reverse one of the payments. Unable to do so, the bank informed her that it would issue a refund instead; however, the mortgagor disputed the payment with her bank. Nevertheless, the mortgagor's account reflected that the August payment had not been made, resulting in the misapplication of the September payment. Thereafter, the mortgagor decided to sell her Arizona home, pay off the mortgage, and attempt to purchase a new home in Texas. Because the mortgagor applied for a loan to finance the home in Texas, she requested that the servicer correct the record of her missing payments because it could negatively affect her credit score. Although the servicer allegedly confirmed that there were no missing payments and stated that it would notify the lender, the mortgagor's loan application was denied. In response, the mortgagor filed a dispute with credit reporting agencies. The servicer confirmed that the payments were current, but it continued to report a 30-day delinquency. Then, the mortgagor sued the servicer for violations of the Fair Credit Reporting Act (FCRA) and later amended the action to add violations of the Texas Debt Collection Act (TDCA). The district court dismissed all claims.

In **Schultz v. Homebridge Fin. Servs., Inc.**, No. 24-50193, 2025 WL 1467431, 2025 U.S. App. LEXIS 12502 (5th Cir. May 22, 2025) (opinion not yet released for publication), the Fifth Circuit affirmed dismissal of the mortgagor's willful violation of FCRA and TDCA claims, but reversed dismissal of her negligent FCRA claim. Under the FCRA, a plaintiff may recover actual, statutory, and punitive damages for a willful violation, which is defined as "knowingly -and intentionally committing an act in conscious disregard for the rights of others." Cousin v. Trans. Union Corp., 246 F.3d 359, 372 (5th Cir. 2001). The court emphasized that while the servicer's actions certainly constituted poor customer service, they did not constitute willful violations. The court noted that FCRA liability did not attach until the furnisher of credit received a dispute from a credit reporting agency. Here, the servicer's alleged willful violation occurred before the mortgagor's credit dispute, and therefore, the willful violation FCRA claim failed. However, the FCRA also allows plaintiffs injured by negligent reporting to recover actual damages. Here, the court held that the mortgagor did adequately state a claim purposes of the bankruptcy code is to relieve honest debtors from business misfortunes and that, in business, debtors can take reasonable steps to keep a business afloat. Second, the court held that under 11 U.S.C. § 727(a)(3), the creditor did not establish that the debtor failed to keep records because of the delegation to accountants and the creditor's access to the debtor's financials via the account access permissions. Third, the court held that under 11 U.S.C. § 523(a)(2)(A) the debtor did not use false representations to obtain financing. The court found insufficient evidence to support either that the debtor received a bonus or that the creditor reasonably relied on the bonus to repay part of the debts. However, the court did find sufficient uncertainty on the 11 U.S.C § 523(a)(6) claim regarding whether the debtor's actions deprived the creditor of collateral. The court explained that it could not determine whether the debtor willfully converted the creditor's collateral by transferring the funds. Therefore, the court remanded the § 523(a)(6) claim (or further proceedings to determine if the debtor acted willfully and maliciously.

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CONSUMER PROTECTION

District Court Had No Jurisdiction in FDIC Matter [D KS]

The bank was a single-branch, state-chartered bank located in Weir, Kansas. The bank faced administrative proceedings for allegedly failing to comply with the Federal Deposit Insurance Corporation's (FDIC) anti-money-laundering regulations. The FDIC alleged that the bank had generated the bulk of its earnings by providing banking services for many foreign financial institutions and failing to monitor their activities appropriately. The bank brought two claims: the first claim was that the FDIC's administrative proceedings without a jury trial violated the Seventh Amendment, and the second claim was that the removal protections for the FDIC's administrative law judges (ALJ) were unconstitutional under Article II. The bank sought an injunction from the district court. The court looked at 12 U.S.C. § 1818(i)(l) to determine whether it had subject matter jurisdiction over this case.

In **CBW Bank v. FDIC**, 769 F. Supp. 3d 1204 (D. Kan. 2025), the district court held that it lacked subject-matter jurisdiction. Under § 1818(i)(l), Congress explicitly stripped district courts of subject matter jurisdiction over administrative proceedings before the entry of a final order. In this case, however, the bank claimed that a structural constitutional claim "merit[ed] a different analysis." The court first considered the factors from the Thunder Basin case, Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 114 S. Ct. 771 (1994), to evaluate "whether Congress intended to preclude district court jurisdiction for structural constitutional claims." Axon Enterprise, Inc. v. FTC, 598 U.S. 175 (2023). In Axon, the court's holding showed that Congress implicitly precluded district court jurisdiction. In contrast, under § 1818(i)(l), Congress explicitly precludes jurisdiction. Therefore, without applying the holding from Axon or the Thunder Basin factors, the court found that a structural constitutional claim did not alter Congress's explicit denial of district courts' jurisdiction. The district court also found that the holdings in Bonan v. FDIC, No. 4:23CV8 HEA, 2023 WL 156852 (E.D. Mo. Jan. 11, 2023) and Ponte v. FDIC, No.

123CV00165MSMLDA, 2023 WL 6441976 (D.R.I. Oct. 3, 2023), in which plaintiffs raised similar jurisdictional challenges under § 1818(i)(l), were unpersuasive. The bank placed its final hopes on Burgess v. FDIC, 639 F. Supp. 3d 732 (N.D. Tex. 2022), rev'd and remanded sub nom, Burgess v. Whang, 152 F.4th 579 (5th Cir. 2025). In Burgess, however, the court's view was grounded on "Burgess's reliance on implicit preclusion, rather than § 1818(i)(1)'s explicit bar." Therefore, the court found Burgess unpersuasive to find that it had jurisdiction to issue the injunction or hear the claims of the bank. Ultimately, the court dismissed the bank's motion for a preliminary injunction for both of its claims because 12 U.S.C.S. § 1818(i)(l) explicitly denied jurisdiction to district courts.

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SECURITY INTERESTS

Lien Stays in Tow: Trailer Transfer Case Affirms Priority [BKR ED TN]

A bank made a multimillion-dollar loan to a trailer merchant, secured by a blanket inventory security interest covering all assets held as inventory by the dealer. A few years into the lending relationship, the debtor transferred five trailers to an affiliated leasing company without reducing the loan balance or obtaining a release of the security interests from the bank. Following this transfer, both the dealer and the leasing affiliate filed for Chapter 11 bankruptcy, and a trustee was appointed to liquidate their assets. The trustee sold the trailers and distributed proceeds to another lender that had filed security interests against the affiliated leasing company. The bank disputed this distribution and commenced an adversary proceeding in the bankruptcy court, arguing that its security interest in the inventory had priority over the security interest of the affiliate's lender, that the security interest continued to attach to the trailers despite the transfer, and that it was entitled to recover the proceeds from the trustee's sale of the inventory. The opposing lender never filed an answer to the amended complaint, leaving the bank's factual allegations uncontested. Instead, the opposing lender objected to the validity of the bank's evidence, opposed the bank's motion for summary judgment, and asserted that its perfected security interests had priority over the bank's security interests.

In **Greeneville Fed. Bank, FSB v. First Midwest Equip. Fin. Co. (In re K&L Trailer Leasing, Inc.),** 672 B.R. 24 (Bankr. E.D. Tenn. 2025), the court agreed with the bank and granted its motion for summary judgment. First, in applying Tennessee's version of UCC Article 9, the court ruled that, as a matter of law, a secured party's perfected inventory security interest remains attached to collateral unless the disposition is authorized or the buyer qualifies as a buyer in the ordinary course of business. Tenn. Code Ann. Sections 47-2-403(2), 47-9-315(a)(l). Thus, because the transfer was between affiliated entities and not in the ordinary course of business to buyers, the security interest followed the trailers into the hands of the affiliated leasing company. Second, the court rejected the evidentiary objections raised by the opposing lender, who argued the bank's evidence was hearsay and, therefore, inadmissible. The court did not find this convincing, because the bank's loan and security documents had been accepted without prior objection in multiple related proceedings, and the court further found that the defendant had never filed an answer to the amended complaint disputing the claims. Third, the court ruled that permitting technical objections to derail summary judgment would be inefficient and contrary to principles of judicial economy, especially in cases where the essential evidence was admissible at trial. Thus, the court granted summary judgment to the bank, holding that its perfected security interest in the inventory had priority in the proceeds from the sale of inventory.

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Tracy Kennedy
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Role of NDBA General Counsel

NDBA's general counsel serves as the attorney for the association. Although Tracy is pleased to be able to serve as a resource for NDBA members in responding to their questions, she is providing general information, not legal advice. Banks must obtain legal advice from counsel who has been retained by the bank to represent the bank's interests in a specific matter.

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