

Banking & Financial Services

The banking & financial services industry has never been more complex, competitive, or highly scrutinized.

In this environment, the banking & financial services industry needs to remain nimble and requires sophisticated counsel that understands not just legal issues, but also market drivers, industry trends and the customer base. Financial institutions and banking professionals need counsel who will leverage this understanding to provide seamless representation and partnership across the full scope of legal and regulatory issues affecting the industry.

As a full service law firm with capabilities ranging from the traditional to the cutting edge, we are uniquely suited to assist the banking & financial service industry grow and thrive while remaining compliant with the full scope of laws and regulations that impact the industry. Our banking & financial services team assists firms of all sizes. Our clients include regional, national, and global institutions in a variety of sectors, from holding companies to banks, thrifts, credit unions, trust companies, mutual funds, mezzanine lenders, private equity and insurance companies, including admitted and non-admitted carriers and health insurers.

We work in multidisciplinary teams with lawyers across the firm, drawing on the abilities and experience of our Corporate, Litigation, Labor & Employment Relations, Regulatory, and Intellectual Property practices. Chambers USA notes that our “renowned” team “takes on all manner of lending and transactions” and that our strengths include “distressed financing deals, regulatory compliance, New Market Tax Credits and tax increment financing, ... creditors’ rights matters, reorganizations and workouts,” and that we are noted for our “expertise in derivatives matters.”

Michael Best is uniquely positioned to deliver the actionable advice and assistance clients need to meet today’s challenges, from the everyday to the exceptional.

Primary Contacts

John Finerty

Partner

jdfinerty@michaelbest.com

T 414.225.8269

Service Areas

While offering the full range of services, our team is focused on providing strategic solutions in the following areas:

Blockchain, Digital Currencies & Smart Contracts

As the use of distributed ledger technology (DLT) and smart contracts becomes more prevalent, and as digital currencies become mainstream, Michael Best's Blockchain, Digital Currencies & Smart Contracts team is here to help your company adopt, invest in, create technological solutions around, and navigate the regulatory landscape of blockchain and DLT.

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Commercial Finance & Lending

We represent lenders and borrowers of all sizes and types across many industries. Our clients include nationally and locally prominent commercial banks, finance companies, insurance companies, and other lenders, as well as borrowers seeking secured or unsecured financing arrangements. Our experience includes the full range of financing and lending transactions, including: revolving and term loans, secured transactions (including asset-based lending, chattel paper financing, floor plan financing, and aircraft and vessel financing), commercial mortgage and construction loans, ESOP loans, intercreditor agreements, loan syndications, and participations, New Market Tax Credit financings, Mezzanine loans, leveraged buyouts, private equity and venture capital financings, letters of credit and reimbursement agreements, agricultural and other specialty finance, and the purchase and sale of individual loans and loan portfolios.

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Commercial Litigation

Our commercial litigation attorneys have a proven track record representing lenders and other financial service providers in matters ranging from commercial foreclosures and collateral replevin, to FDIC receiverships, complex Chapter 11 bankruptcies, and insurance company insolvencies and rehabilitations. We have also successfully defended banks and their officers against allegations of fraud and non-conforming lending practices.

We know the banking & financial services business and bring business savvy to litigation strategy. Our experience demonstrates this is the best formula for our clients' success.

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Creditors' Rights, Bankruptcy, Reorganization & Workouts

We have extensive experience offering counsel in situations of financial distress and potential default, representing distressed businesses as well as creditors. Our core group of attorneys have a great depth of experience which enables us to assist clients navigate tumultuous situations involving businesses in financial distress and achieve favorable outcomes for businesses and creditors.

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Derivatives

We advise dealers and end users on a full range of derivative products throughout the entire derivatives lifecycle, from the structuring and documenting of transactions to enforcement.

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Equipment Leasing & Finance

Equipment leasing and finance companies play an important role in today's economy by helping their clients obtain much-needed equipment when traditional sources of financing are not possible or desirable. Although leasing and finance companies work diligently to protect themselves through their underwriting process, defaults and disputes still happen. When they do, an experienced legal team can make all the difference in a successful resolution. Our leasing and finance team has extensive experience in successfully obtaining possession of equipment so that it can be auctioned, litigating and settling cases in a cost-effective manner, and obtaining successful decisions at trial.

Financial Institution Regulatory Law

We assist a cross-section of banking & financial services organizations in complying with the complex and changing regulations imposed by state and federal governments. Our attorneys are well versed in compliance and regulatory issues, including consultation with the Federal Reserve, Office of the Comptroller of Currency, FDIC, and Wisconsin Department of Financial Institutions. We have extensive experience with consumer protection statutes and regulations such as the Truth-in-Lending, Real Estate Settlement Procedures, Equal Credit Opportunity, and Wisconsin Consumer acts.

Government Investigations

Government scrutiny of the banking & financial services industry has intensified. Even with the repeal of the Dodd-Frank Act and reorganization of the Consumer Financial Protection Bureau, it remains more important than ever to have the right legal team to respond to government investigations and inquiries.

Our team, led by former federal prosecutors, has extensive experience handling sensitive government and internal investigations, and maintains a strong record of successfully resolving regulatory and criminal matters. We assist banking & financial services industry clients with all facets of regulatory enforcement investigations, corporate criminal defense, civil litigation, grand jury proceedings, corporate internal investigations, risk assessment, and compliance counseling.

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Insurance Coverage Litigation and Insurance Industry Rehabilitation

When insurance coverage and duty to indemnify claims, or broker, employee benefit or contractual disputes arise, Michael Best is ready for the challenge presented by these often complex and unique cases. We regularly represent admitted and non-admitted carriers, re-insurers, health insurers, trustees, and other insurance industry clients in a range of areas including:

- Primary and excess coverage litigation
- Directors' and Officers' insurance coverage disputes, both as coverage counsel to the insurer and defending bank and other corporate boards and directors under such policies
- Export credit insurance coverage analysis and collection claims
- Subrogation claims, including "make whole" remedies under ERISA plans
- Multiemployer pension and health plan liability

- Jointly administered Taft-Hartley plan disputes and deadlocks between trustees
- Insurance company rehabilitation proceedings, serving as litigation and tax counsel to the regulator, lead litigation counsel for the subject insurer or creditors'/policyholders' counsel.

LIBOR Phase-Out

Our banking & financial services team counsel lenders, borrowers, and derivatives counterparties on the LIBOR phase-out and its impact on contract terms. We carryout both large- and small-scale contract amendment projects, replacing LIBOR references with our customized fallback terms. We ensure that our clients are up-to-speed on the latest developments related to the Secured Overnight Financing Rate (or "SOFR," the USD-LIBOR replacement), and other industry initiatives related to the transition away from LIBOR. Our attorneys are also available for training on benchmark reforms and how to most efficiently and effectively prepare for the "end" of LIBOR in 2021.

Privacy & Cybersecurity

Privacy & Cybersecurity are top concerns for the banking & financial services industry — with good reason. Regulations have proliferated, cyberattacks are commonplace, and companies are being fined millions of dollars for poor data handling practices. Our team provides legal counseling to support risk mitigation strategies across the enterprise, and help clients to stay ahead of emerging threats. We have real-world experience with the myriad of ways privacy and cybersecurity affects the banking & financial services industry, including on issues related to the Gramm-Leach-Bliley Act (GLBA), Fair Credit Reporting Act (FCRA), well as privacy programs and cybersecurity guidance through state to national regulations.

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Experience

- Won court approval of a \$5 billion debt exchange transaction to facilitate a successful exit of the Segregated Account of Ambac Assurance Corp. from an insurance rehabilitation, the largest in Wisconsin history.*
- Represented a regional financial services company on credit facilities to a large agricultural borrower for its capital needs and future operations. The transaction combined a refinance with new additional credit commitments, and included term and borrowing base revolving credit facilities. Our team provided all representation to the lender, including due diligence, drafting, negotiating, and coordinating execution of loan documents. Our work involved issues unique to production agriculture, including the impact of state agricultural liens, the federal Perishable Agricultural Commodities Act trust provisions, water rights, and hedging arrangements.
- Represented a financial services holding company on a commercial real estate construction loan for a 400-unit apartment development with 750 parking spaces in Grandville, Michigan. We provided all representation to the lender, including drafting, negotiating, and coordinating execution of the loan documents for this new customer—the largest developer of multi-family residential properties in Western Michigan.
- Defended a multinational banking and financial services company in a state court residential foreclosure case in which the borrower filed counterclaims for misrepresentation and violations of federal

regulations governing loan modifications. At trial, after the close of the borrowers' case, we moved to dismiss for lack of evidence. The court granted our motion and dismissed all claims against our client.

- Represented a national bank in recovering \$10 million from the FDIC related to a failed correspondent bank under receivership.
- Work with clients making title insurance claims for insured policy risks and defaults under closing Protection letters.

Disclaimer: OCI retained Michael Best in this case pursuant to its procurement protocols after issuance of a Request for Qualifications; selection of the firm as counsel is not an endorsement by the state of Wisconsin or any state agency.