



## A.S. Pratt

Subject: 2012 Update No. 1 to *Banking Law Digest*

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Dear Valued Subscriber:

The *Banking Law Digest* helps you keep up to date on developments in the many areas of law affecting financial institutions today. This update contains new information addressing the following areas:

- **Misnomer.** What's in a name? Litigation expense. *Barth v. Bank of America*. See Chapter 1, Section 1.20.
- **Discrimination in Employment.** The complications that can result from comments like "You're a dinosaur around here," "cutie," "making love to you on a dance floor," "black and white," and "his own people." *Kremp v. Wachovia Bank*, *Overly v. Keybank*, *Egan v. Freedom Bank*, and *Vaughn v. Woodforest Bank*. See Chapter 1, Sections 5.67, 5.75, and 5.85.
- **Veteran Reemployment Rights.** A former employer's delay in rehiring a returning veteran. *Serricchio v. Wachovia Securities, Inc.* See Chapter 1, Section 5.85.
- **Tax Accounting.** An attempt to retroactively change the method of accounting for credit card late fees. *Capital One Financial Corp. v. IRS*. See Chapter 2, Section 9.40.
- **Arbitration.** The enforcement of mandatory arbitration clauses. *Wachovia Bank v. VCG Special Opportunities Master Fund* and *Krinsk v. Suntrust Banks*. See Chapter 2, Section 10.35.
- **Guarantors.** The reluctance of guarantors to pay up. *State Bank of Texas v. Patel* and *Alerus Financial v. The Marcil Group*. See Chapter 2, Section 14.12.
- **Resequenced Transactions and Overdrafts.** The \$410 million settlement of overdraft litigation. *Torres v. Bank of America (In re Checking Account)*. See Chapter 2, Section 17.05.
- **Termination of Enhanced Checking Account Services.** The enforceability of clauses contained in contracts for enhanced

checking account services. *Affinion Benefits Group v. Econ-O-Check Corp.* See Chapter 2, Section 17.12.

- **Joint Ownership of CD.** The presumption that sums remaining on deposit at the death of a joint owner belong to the survivor. *In re Estate of Butler*. See Chapter 2, Section 20.05.
- **Federal Preemption.** The continuing development of federal preemption concepts after Dodd-Frank. *Molosky v. Washington Mutual*, *Cline v. Bank of America*, *O’Neal v. Capital One Auto Finance*, and *People v. First American Corp.* See Chapter 3, Section 21.15. Also, FCRA preemption. *Macpherson v. JPMorgan Chase Bank* and *Purcell v. Bank of America*, Chapter 6, Section 37.10.
- **Force-Placed Insurance.** The effective date of the Dodd-Frank/RESPA restrictions on force-placed insurance and a lender’s right to place the insurance. *Williams v. Wells Fargo Bank*. See Chapter 6, Section 35.36. Also, *Gibson v. Chase Home Finance*, Chapter 33, Section 190.00.
- **Truth-in-Savings.** The availability of state causes of action to remedy Truth-in-Savings Act violations. *Rose v. Bank of America*. See Chapter 6, Section 35.50.
- **TILA Harvester Card Regulation.** Whether the Federal Reserve exceeded its authority under TILA when it amended its regulation limiting harvester credit card fees imposed before account opening. *Southern Division First Premier Bank v. CFPB*. See Chapter 6, Section 38.05.
- **TILA Rescission Forms.** Use of the wrong model rescission form. *Watkins v. Suntrust Mortgage*. See Chapter 6, Section 38.15.
- **TILA Acknowledgment Presumption.** The effect of the presumption created by an acknowledgment of receipt of disclosures. *Marr v. Bank of America* and *Balderas v. Countrywide Bank*. See Chapter 6, Section 38.15.
- **SWIFT Records Confidentiality.** The confidentiality of records maintained by SWIFT, the “nerve center of the global banking system.” *Amidax Trading Group v. S.W.I.F.T.* See Chapter 6, Section 38A.46.
- **Security Breach.** The need to allege more than speculative future injury to establish standing for security breach actions. *Reilly v. Ceridian Corp.* See Chapter 6, Section 38A.85.

- **Failed Consent Judgment.** A judge's nixing of a \$285 million proposed consent judgment between Citigroup Global Markets and the SEC. *SEC v. Citigroup Global Markets*. See Chapter 7, Section 40.04.
- **Professional Malpractice.** An engineering firm's liability for failing to get it right when advising a lender about a coal mine. *Standard Bank v. Runge*. See Chapter 7, Section 40.05.
- **Conversion of Cash Letter Proceeds.** A bank's liability in conversion for failing to return the amount of a cash letter. *Liberty Bank & Trust v. Gulf Coast Bank & Trust*. See Chapter 7, Section 40.10.
- **Use of Bank Domain Names.** An Internet businessman's use of domain names similar to bank names. *Webadviso v. Bank of America Corp.* See Chapter 7, Section 40.95.
- **Chapter 7 Reaffirmation Agreement.** The enforceability of a reaffirmation agreement premised on a mutual mistake. *In re Bailey (Salyersville National Bank v. Bailey)*. See Chapter 8, Section 45.50.
- **Foreclosure Actions.** Various issues raised regarding foreclosures. *M&I Marshall and Ilsley Bank v. Mueller*, *Stebly v. Litton Loan Servicing*, *HSBC Bank USA v. Gabay*, *HSBC Bank USA v. Taher*, *U.S. Bank v. Ramjit*, *Downey S&L v. Trujillo*, *Great Western Bank v. Branham*, *Lona v. Citibank*, and *Gonzalez v. Wilshire Credit Corp.* See Chapter 33, Sections 197.00 and 201.00.
- **HAMP Modification.** The right to sue for failing to comply with HAMP requirements. *Nelson v. Bank of America*. See Chapter 33, Section 201.00.

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Sincerely,

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