

David M. Clem

David is a litigator and trial lawyer, focusing his practice on complex commercial litigation. He has extensive experience guiding businesses through the litigation process, from pre-suit evaluation through jury and bench trials and post-judgment enforcement. He has helped produce favorable outcomes in courtrooms and arbitrations involving extreme time pressure, complex issues, class actions, multi-district litigation, obscure or technical material, and large numbers of parties and witnesses.

David's clients include commercial and retail banks, credit unions, broker-dealers, mortgage lenders, consumer lenders, fintechs, investment funds, NBFIs, and other financial services players. He has litigated disputes in state and federal courts involving syndicated and participated loans, bank operations, securities fraud, lender liability, statutory and regulatory compliance, negotiable instruments, and various creditors' rights issues. In addition to his financial services experience, he has represented life and health insurers, oil and gas operators and investors, real estate developers, franchisees, and middle-market businesses across a variety of industries across the United States.

When he takes a case, David prioritizes clear, plain-English communication. Clients rely on his straight-forward speaking and writing style to help them quickly understand issues, risks, and options. David's style makes him an effective courtroom advocate—he explains complex issues in simple, precise language, without jargon or legalese.



PARTNER

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CORE FOCUS

- Financial Services
- Financial Services: Litigation
- Financial Services: Investigations
- Real Estate
- Real Estate: Litigation
- Corporate Plaintiffs
- Corporate Plaintiffs: Litigation
- Corporate Plaintiffs: Investigations

EDUCATION

- Texas Wesleyan University School of Law, 2005
 - Dean's List

- Law Review Editorial Board
- Mock Trial
- Research Assistant
- University of Texas at Arlington, 2000

ADMISSIONS

- State Bar of Texas, 2005
- U.S. Supreme Court
- United States District Courts for the Northern, Eastern, Southern, and Western Districts of Texas
- United States Court of Appeals for the Fifth Circuit
- United States Court of Appeals for the Eleventh Circuit

HONORS & AWARDS

- Recognized by Super Lawyers for Civil Litigation and Securities Litigation (2023)
- Recognized by Martindale-Hubbell, rated AV© Preeminent in Litigation, Commercial Law, and Civil Practice (2014–2023)

EXPERIENCE

- Won defensive summary judgment in the Eastern District of Texas on behalf of Top-10 US bank, defending against UCC Article 4 claims asserted by corporate depositor. (March 2023)
- Represented securities industry executive as third-party witness in FINRA arbitration. (January 2023)
- Secured defensive summary judgment and dismissal with prejudice in favor of individual bank employees on claims of fraud, conspiracy, and deceptive trade practices arising from deposit and payment card relationships. (January 2023)
- Represented nationwide mortgage lender in claims against confidential corporate and individual parties. By assembling evidence and presenting a compelling mediation presentation, the lender settled the claims on favorable terms before filing suit. (October 2022)
- Won No-Evidence Summary Judgment on behalf of Top-10 US bank in state court action involving common law and regulatory claims arising from bank's relationship with broker-dealer. The judgment dismissed all claims with prejudice. (June 2022)
- Represented receiver of global consumer electronics brand in proceedings related to receiver's discharge of obligations and the brand's eventual Chapter 11, Subchapter V bankruptcy reorganization, securing appropriate compensation and waivers for receiver. (June 2022)
- Specialty counsel to national marketing agency advising on bank regulatory compliance issues, including Nacha operating rules. (February 2022)
- Represented bank executive in hearing before the Office of Financial Institution Adjudication. (February 2022)
- Complete victory in FINRA arbitration on behalf of broker-dealer and financial advisor defending investor claims for suitability, misrepresentation, and fraud. The investor sought up to \$250,000, based on market losses and exemplary damages. The arbitration award dismissed the investor's claims in their entirety. (November 2021)
- Complete victory following bench trial for large US bank in complex litigation involving three parties and multiple claims, counterclaims, and cross-claims. The case involved possession, lien, title, and debt issues related to a valuable exotic car. The trial court rendered judgment awarding to the bank: possession of the car (or payment of its debt, in the alternative), restoration of the lien, attorneys' fees, and exemplary damages. (Supervising lawyer, October 2021)
- Won offensive summary judgment for Top-10 US bank in large complex commercial debt matter. Defendants asserted dozens of defenses and counterclaims, including counterclaims based on usury and

UCC Article 9, and filed a variety of discovery and merits-based motions designed to impede litigation progress. The court dismissed every counterclaim, overruled every evidentiary objection, denied defendants' remaining motions, and granted complete summary judgment in the bank's favor. (September 2021)

- Won Rule 12(b)(6) dismissal with prejudice of class action claims for a regional, Texas-based bank. The plaintiffs sought to represent a class of agents who claimed to be owed fees in compensation for introducing Paycheck Protection Program borrowers to the bank. The court agreed with the bank that the CARES Act did not provide a private right of action. (February 2021)
- Won Rule 12(b)(6) dismissal with prejudice for Top-10 US bank, dismissing counterclaims that alleged violations of the Anti-Tying Act, securities laws, and usury laws, among others. The counterclaimant borrower alleged that the bank violated anti-tying restrictions in the Bank Holding Company Act by offering an interest rate swap (governed by an ISDA Master Agreement) in connection with a construction loan. (January 2021)
- Secured Rule 12(b)(6) dismissal with prejudice for bank holding company defending statutory claims brought by deposit customer following a multimillion-dollar levy imposed by the Internal Revenue Service. (July 2020)
- Defended Top-10 US commercial bank in federal RICO, civil conspiracy, and conversion suit brought by a large, privately held medical services company against several domestic and international defendants. The bank claims centered on a lending relationship with alleged co-conspirators. Won successive Rule 12(b) motions to dismiss, ultimately securing dismissal with prejudice, by convincing the court that the bank acted as a routine lender, with no knowledge of the alleged conspiracy. (October 2019)
- Wrote briefs and presented oral argument to the Eleventh Circuit Court of Appeals in defense of trial victory for lead bank on a \$35 million participated loan facility. Following oral argument, the Eleventh Circuit affirmed the judgment, writing that the trial court applied the correct standards and rightly found that the plaintiff loan participant failed to prove any damages. Opinion available here. (Argument November 2017; Opinion January 2018)
- Enforced arbitration agreement in complex commercial litigation involving intense opposition from numerous multinational parties, staying claims of both signatories and non-signatories. (November 2017)
- Obtained injunction and large summary judgment against chemicals exporter for claims arising from international working capital credit agreement supported by the Export-Import Bank of the United States. (June 2016)
- Successfully defended super regional bank in federal court against claims brought by a loan participant. Plaintiff sought approximately \$10 million in damages resulting from the alleged breach of a participation agreement involving a failed mixed-use development in Northwest Florida. Although the court issued summary judgment opinion adverse to the bank on breach of contract, after a five-day trial, the court entered a "take nothing" judgment, resulting in a complete victory for the bank. (First Chair, January 2016)
- Won significant discovery order from federal court that analyzed privileges arising from Suspicious Activity Report regulations and applied the privileges to protect thousands of pages of sensitive bank documents. (July 2014)
- Achieved dismissal with prejudice of federal qui tam complaint that alleged the fraudulent management of a \$16 billion commercial loan portfolio. (April 2014)
- Represented national bank on claims related to large promissory note and guaranty through trial, resulting in substantial monetary judgment in favor of the bank. (First Chair, January 2012)
- Achieved favorable results on behalf of a commercial creditor in an adversarial proceeding before a bankruptcy court. (November 2011)
- Developed and managed pre-litigation strategy for a large Houston-area marina; retained and directed experts in damage-mitigation efforts; and drafted pleadings ultimately resulting in a \$1.6 million summary judgment against manufacturer and installer of docks. (2011)
- Representation of an oil and gas developer and operator in various matters as both plaintiff and defendant. (2009 through present) Successful results include injunctive relief against landowner,

receiverships appointed for mineral interest owners, and other settlements on favorable terms.

- Regular representation of banks on deposit issues, including ACH, check, and wire fraud claims, warranty issues, and other UCC Article 4 and 4A issues. (2009 through present)
- Regular representation of banks on operational issues involving policies and personnel, customer complaints, thefts and robberies, and facilities management issues, while managing scrutiny from regulators and the media. (2009 through present)
- Regular representation of banks and other financial services institutions in responding to writs of garnishment, levies, and subpoenas. (2009 through present)
- Briefing in support of appellate opinion that affirmed trial court's summary judgment in favor of school district in whistleblower action. (February 2008)
- Briefing in support of Texas Supreme Court reversal of appellate court's opinion that a school district's immunity from suit had been waived in a commercial breach of contract case. (August 2007)
- Regular representation of commercial banks, credit unions, and other creditors on commercial collection matters involving debts ranging from \$50,000 through \$50,000,000. Strategies involve pre-suit review of credit instruments, title and UCC searches, solvency reviews and other collection analyses; pursuing non-judicial relief such as lis pendens filings, capturing rents and accounts payable streams, and foreclosing on collateral; seeking pre-suit mediation or informal negotiation, supported by appropriate tolling, forbearance, or other pre-negotiation agreements; filing suit in state or federal court or filing arbitration; and pursuing matters diligently from inception to payment, including post-judgment enforcement and support of collection on governmental guarantees like the SBA (Small Business Administration) and the EXIM (Export-Import) Bank of the United States. (2005 through present)

LANGUAGES

English, French

COMMUNITY

- Eagle Scout, Boy Scouts of America
- Dallas Running Club
- Rogue Running Club
- Friends of the Katy Trail

ASSOCIATIONS

- Member, Southwest Association of Bank Counsel
- Member, Southwest Bankers Association
- Dallas Bar Association (Business Litigation Section)
- State Bar of Texas (Litigation Section)

RELATED NEWS

- Recent Changes to Bankruptcy Code Helps Lenders and Creditors with Preference Claims
- OCC's New "True Lender" Rule Already Having Positive Effects: Colorado Settles Long-Running "True Lender" Case
- New Regulation Alert: OCC Proposed New "True Lender" Rule May Reduce Claims Against Banks and Facilitate Partnered Lending
- OCC Issues New Final Rule On Community Reinvestment Act
- Stimulus Funds & Existing Debt