

David M. Clem

David is a talented litigator, 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, consumer lenders, 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.

Martindale-Hubbell gave David an AV© Preeminent Rating in Litigation, Commercial Law and Civil Practice, based upon a survey of his peers.

CORE FOCUS

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



PARTNER

P: 972-474-1717

F: 972-474-1750

E: dclem@johnstonclem.com

1717 Main Street
Dallas, Texas, 75201
United States of America

- 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

EXPERIENCE

- 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 and credit unions on deposit and operational issues. (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 \$35,000,000. 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 other accounts payable streams, and foreclosing on collateral; seeking pre-suit mediation or informal negotiation, supported by appropriate pre-negotiation agreements; filing suit in state or federal court or filing arbitration; and pursuing matters diligently from inception to payment. (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