

## Kenneth C. Johnston

Clients describe Kenneth Johnston as “*very confident, personable, connected and cost-effective. The complete package.*” Chambers and Partners

Kenneth focuses his practice on financial services, corporate governance, dispute resolution, and insolvency. He routinely advises financial services companies in disputes and regulatory compliance matters, as well as insolvency. Kenneth has also developed a successful track record resolving corporate governance disputes, with an emphasis on the energy industry. Among other things, he has led clients for decades on successful endeavours to gain control of companies and key energy assets in Asia, Europe, North America, Central America, South America—including related offshore jurisdictions.



### PARTNER

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### SPECIFIC PRACTICE AREAS INCLUDE:

- Professional negligence claims arising from failed financial transactions, including claims against law firms, accounting firms and investment banks.
- Claims in multi-lender transactions such as loan syndications and participations, including claims by or against arrangers, administrative agents, and loan participants.
- General bank operations, with emphasis on claims under Articles 3 (negotiable instruments), 4 (deposits and collections), and 4A (funds transfers) of the Uniform Commercial Code.
- Lender liability claims, including claims arising from non-disbursement of loan funds, termination of credit facilities, usury, refusing to extend loans, purported oral loan commitments, and rejecting loan payments after default.
- Material litigation, including securities fraud, the False Claims Act, fiduciary duty, mortgage lending practices, and class actions.
- Statutory and regulatory compliance litigation in the United States, including the anti-tying provisions of the Bank Holding Company Act, the Equal Credit Opportunity Act, the Truth in Lending Act and Regulation Z, usury under the National Bank Act and state laws, the Real Estate Settlement Procedures Act, CERCLA, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Telephone Consumer Protection Act.
- Insolvency and creditors' rights, encompassing every aspect of insolvency—ranging from debt restructuring, collection, foreclosures, workouts, involuntary bankruptcies, and distressed asset sales to pre-packaged bankruptcy, plan negotiations, confirmation litigation, and avoidance actions.
- Corporate governance disputes under Delaware, Texas, and Nevada laws, among other states and foreign countries.

## CORE FOCUS

- Financial Services
- Financial Services: Investigations
- Financial Services: Compliance
- Financial Services: Litigation
- Corporate Plaintiffs
- Corporate Plaintiffs: Litigation

## EDUCATION

- University of Mississippi, J.D., 1991
  - Judicial Externship (1991)
  - United States Department of Justice Honors Program (1991)
  - Journal of Space Law (1989—1991)
  - Mississippi Model Jury Instruction Committee, Internship (1990)
- University of Mississippi, B.B.A., 1988
  - Major in Banking and Finance

## ADMISSIONS

- State Bar of Texas, 1995
- United States District Courts for the Northern, Southern, Eastern and Western Districts of Texas
- State Bar of Mississippi, 1991
- United States District Courts for the Northern and Southern Districts of Mississippi
- United States District Courts for the Northern District of Florida
- United States Court of Appeals for the Fifth Circuit
- United States Court of Appeals for the Eleventh Circuit
- U.S. Supreme Court

## HONORS & AWARDS

- AV Preeminent® Rating by Martindale Hubbell
- Super Lawyers by Thomson Reuters (2006—2020)
- Texas Rising Stars by Thomson Reuters (2004, 2006)
- Best Lawyers in Dallas published by D Magazine, Banking and Finance (2013—2020)
- Ranked in Chambers USA Guide, Texas, Litigation: General Commercial (2009—2010, 2013—2016)
- Recognized by Lawyer Monthly in the Leading Lawyer Global 250 Guide, an annual guide of lawyers whose knowledge and experience continue to influence the wider profession, and who have achieved recognition through other notable honors (2014)
- Received Law Awards 2011 for Commercial Litigation Firm of the Year, USA by Finance Monthly
- Named as one of the Best Lawyers Under 40 in 2006, an exclusive list of attorneys published by D Magazine
- Earned spot among The Defenders, an annual listing of the top 15 business defense attorneys recognized by Dallas Business Journal (2008)
- Senior Fellow, Litigation Counsel of America

- American Law Institute, Elected Member since 2010
  - Principles of the Law, Data Privacy—Members Consultative Group
  - Rest. Third, Torts: Economic Torts and Related Wrongs—Members Consultative Group

## EXPERIENCE

- Represented appellee bank in appeal to Eleventh Circuit Court of Appeals, defending 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](#).
- Currently representing agent bank in claims against an investment bank in failed loan syndication.
- Currently representing bank syndicate in accounting malpractice claims against regional accounting firm in failed loan syndication.
- Currently representing bank in claims against a law firm for professional negligence arising from the bank's role as documentation agent.
- Represented lenders and funds in securities fraud matters related to various junk bond offerings.
- Currently representing primary secured lender in Stanford Financial receivership.
- Routinely represents lenders on a variety of preemption matters under the National Bank Act, the Home Owners Loan Act, and the Depository Institutions Deregulation and Monetary Control Act.
- 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 against 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 (2016).
- Won significant discovery ruling 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 from production in Ponzi scheme litigation seeking to hold bank liable for aiding and abetting securities fraud (2014).
- Achieved dismissal with prejudice of federal qui tam complaint that alleged the fraudulent management of a \$16 billion commercial loan portfolio (2014).
- Successfully defended a lender in a bank tying case (2012).
- Routinely represents companies in disputes under the Equal Credit Opportunity Act, the Truth in Lending Act and Regulation Z, usury under the National Bank Act and state laws, the Real Estate Settlement Procedures Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Telephone Consumer Protection Act.
- Successfully defended class certification in financial services case (*Finley v. Washington Mut. Bank, F.A.*, 2008 WL 2008850) (E.D.Tex. May 08, 2008) ("... the Court agrees with Defendant that Plaintiff has failed to show how individual issues will not overwhelm this case... Moreover, Defendant has submitted a detailed and comprehensive predominance analysis to show the many individualized issues implicated by Plaintiff's claims.").
- Established criteria for examining and disgorging excessive executive compensation paid on the eve of bankruptcy: *Grigsby v. Carmell*, 238 B.R. 758 (Bankr. N.D. Ill. 1999) (\$4,032,845 judgment in a multi-week trial).
- Successfully defended an \$8 million breach of fiduciary duty claim in multi-district litigation in Federal courts in Minnesota, Missouri and Texas.
- Successfully defended a Dallas Independent School District Trustee in a multi-million dollar defamation claim by the former DISD Superintendent, Waldemar Rojas (\$135,000 mediated settlement on the eve of trial).
- After obtaining judgments for fraud in an oil and gas Ponzi scheme, successfully "busted" a Texas resident's unlimited homestead exemption.

- Obtained securities fraud and racketeering judgments in excess of \$100 million, which ultimately led to the imprisonment of two defendants.
- Imposed a constructive trust on 400+ oil and gas wells located throughout the United States and in the Gulf of Mexico.
- Successfully defended a casino in a declaratory judgment action where a patron claimed that a multi-million dollar gaming debt violated Texas' public policy against gambling (*Phillips v. Grand Casinos of Mississippi, Inc.-Biloxi*, 2004 WL 2533589 (N.D. Tex.) (appeal dismissed)).
- Directed an international fraud investigation, tracing several million dollars throughout the United States, the Caribbean, Europe, Asia, Central America and South America.
- Successfully defended a multi-million dollar lender liability claim (failure to lend) by establishing fraud in connection with the claimant's loan application.
- Successfully defended a financial institution in a forged endorsement check case involving hundreds of checks (\$9,000 settlement on the eve of trial.)
- Successfully defended a corporate executive on a multi-million dollar Title VII sexual harassment claim – prior to the suit, the EEOC made findings of historical and present sexual harassment by the executive (\$30,000 mediated settlement on the eve of trial.)
- Successfully defended a financial institution in a race discrimination case under the Equal Credit Opportunity Act (dismissed for failure to state a claim.)
- Successfully prosecuted numerous actions on behalf of bankruptcy trustees and creditors to prevent bankruptcy discharges.
- Successfully represented an energy company in the defense of an involuntary bankruptcy petition, which resulted in an out-of-court creditor composition that provided the company with a 40% reduction of its short and long-term unsecured debt.

## REPRESENTATIVE CLIENTS

- Comerica Bank
- Hancock Whitney Bank
- Hancock Holding Company
- JP Morgan
- McGriff, Siebels & Williams, Inc.
- Regional Acceptance Corporation
- Regions Financial Corporation
- Regions Bank
- Sheffield Financial
- Truist Bank
- Trustmark National Bank
- Wells Fargo

## COMMUNITY

- United Way of Metropolitan Dallas (Priority Needs Grant Panel)
- *Pro bono* appeal to the United States Court of Appeals for the Fifth Circuit
- The Children's Trust
- Board of Directors, SMU Athletic Forum
- Ducks Unlimited, Sponsor
- Board of Advisors for the University of North Carolina School of Law, Center for Banking and Finance.

## ASSOCIATIONS

- Dallas Bar Association

- Pro Bono College of the State Bar of Texas
- American Bankruptcy Institute
- Texas Association of Bank Counsel
- Member, Trial Law Institute
- Member, Diversity Law Institute
- Texas Young Lawyers Association
- Dallas Association of Young Lawyers

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- OCC Issues New Final Rule On Community Reinvestment Act
- The Billion Dollar Fight About "Agent"? Origination Fees for Paycheck Protection Program Loans
- Kenneth C. Johnston Selected for Best Lawyers in Dallas