

## Banking Group Of The Year: Williams & Connolly

By Jon Hill

*Law360 (January 27, 2025, 3:32 PM EST)* -- Williams & Connolly's financial services litigators clinched court victories for Fifth Third Bank and Bank of America and helped banking industry groups take on federal regulators' new rules on community lending, medical debt and more, earning a place as one of the 2024 Law360 Banking Practice Groups of the Year.

The Washington, D.C.-based law firm, which has a rotating roster of 40 to 50 attorneys working on financial services-related matters at any given time, boasts a reputation as a top shop that banks and other financial industry participants call on when faced with high-stakes civil litigation or regulatory issues.

Although that reputation dates back years — big banks turned repeatedly to Williams & Connolly for counsel during litigation to spin out of the 2008 financial crisis, for example — the firm's successes for banking clients this past year have underscored its strengths.

"This practice is of great importance to us," said Enu Mainigi, a longtime partner at the firm. "We've been on the radar of banks since the financial crisis cases, but [this area of litigation] can be cyclical. Over the last several years in the Biden administration, regulators have been giving a lot of attention to banks again."

"We are lucky enough to be one of the firms that banks think of when the regulators' focus is on them," Mainigi continued. "And when the banks want to push back, we have often been lucky enough to be part of that pushback."

Case in point: When the American Bankers Association and other bank trade groups moved early last year to challenge new Community Reinvestment Act rules that were set to start taking effect, they tapped a team from Williams & Connolly to lead the charge.

The rules, which the federal banking agencies adopted in late 2023, were the culmination of a lengthy effort aimed at modernizing how banks are graded for compliance with the CRA, a decades-old anti-redlining law that seeks to boost lending in underserved areas.

But in a February 2024 lawsuit filed by their Williams & Connolly team, the trade groups argued the new rules changed the CRA grading process in ways that played too fast and loose with the underlying law



and would discourage lending in places that need it most.

Those arguments helped persuade a Texas federal judge to issue a preliminary injunction against the rules the following month, a crucial early win that has halted their rollout for now — and possibly for good.

Although the agencies have appealed the injunction, President Donald Trump's return to the White House since then could clear the way for new appointees to rescind the rules and start over in the interim.

Ryan Scarborough, a Williams & Connolly partner who leads the firm's team on the case, elaborated on their strategy going into the litigation, saying they wanted to "really message the banks' fundamental support for the goals of the Community Reinvestment Act statute."

By explaining how the rules would be counterproductive to those goals, the team felt it would provide important context illustrating their more technical arguments about why the rules go beyond what the CRA authorizes, according to Scarborough.

"If you can win a judge's heart, if they can see that there's really something arbitrary or problematic about a rule, then it's much easier to win them over intellectually on the technical, statutory arguments," he said. "When we present a case, we try to appeal both to the heart as well as the head."

This lawsuit over the banking agencies' overhauled CRA rules is just one of multiple legal challenges that Williams & Connolly is bringing on behalf of financial institutions or their trade groups.

The firm is helping represent crypto-focused Custodia Bank, for example, in an ongoing court battle for access to a Federal Reserve master account, and it filed suit against the Consumer Financial Protection Bureau earlier this month on behalf of lender and credit reporting groups that are seeking to overturn the agency's new rule banning medical debt from credit reports.

Bank groups have likewise retained Williams & Connolly's talents as they contest the \$5 overdraft fee rule that the CFPB finalized late last year.

Williams & Connolly also successfully represented Fifth Third Bank in pushing back on — and ultimately resolving — a CFPB enforcement action that accused the bank of opening unauthorized customer accounts.

The CFPB sued Fifth Third over the allegations **in 2020**, seeking penalties that the agency later estimated could exceed \$1 billion. Although the bank acknowledged a small number of improper account openings had occurred, it maintained that the issue had already been dealt with and was being blown out of proportion by the CFPB.

With Williams & Connolly as lead counsel, Fifth Third mounted a vigorous defense that was able to get discovery limited and the timeframe at issue narrowed. The judge, too, cast doubt on the CFPB's case after reviewing expert reports.

That paved the way for a July settlement to end the case, with Fifth Third agreeing to a fine of just \$15 million that was wrapped into a larger, multimatter deal with the CFPB that did not include any admission of wrongdoing.

"Particularly with regulatory investigations and enforcement, the work of our financial services practice is all contingent on the client needs," said Mainigi, who, along with Scarborough, helmed the team defending Fifth Third.

Whether the new Trump administration will dial back the approach of the past few years "remains to be seen," Mainigi added, "but a big part of our practice is representing various banks in class actions, especially those that might at some point head toward trial. Just plain old civil litigation against banks is certainly going to continue."

Indeed, Mainigi and a Williams & Connolly team recently locked in a major jury trial win for Fifth Third in a certified customer class action brought over its "Early Access" cash advance loans, which the plaintiffs alleged the bank had effectively overcharged for.

Fifth Third stood by its cost disclosures and opted to fight the case all the way to trial, a potentially risky move that big corporate defendants usually avoid.

But after an eight-day trial in 2023, an Ohio federal jury concluded that the bank owed no damages for the plaintiffs' sole remaining \$444 million breach-of-contract claim, rejecting it under the "voluntary payment doctrine."

The doctrine generally holds that people can't recover for payments that they made knowingly and willingly. At trial, the jury heard testimony that they decided had shown customers fully understood the price of the cash advance loans they were paying.

Although the plaintiffs went on to ask for a new trial, Mainigi and her team secured a decision this past October that denied the request. Pending appeals, it could cap off more than a decade of litigation for the bank.

A Williams & Connolly team that Scarborough has helped lead, meanwhile, extracted Bank of America last year from class action litigation in Hawaii federal court, where a proposed class of homeowners was alleging the bank's involvement in a fraudulent foreclosure scheme.

Scarborough and his team had won Bank of America's dismissal from the 2022 case once before, but they had to go back to the mat in 2023 after an amended complaint was filed. Last March, they prevailed for a second time — Bank of America was again dismissed, this time with prejudice, and they are now working to defeat an appeal at the Ninth Circuit.

The repeated dismissal followed another series of victories that Williams & Connolly has achieved at the state court-level since 2021 for several banks in the Heartland Financial USA Inc. corporate family.

Each of these banks has faced proposed class actions that accused them of improperly charging overdraft or insufficient funds fees, but with Williams & Connolly as lead counsel, two of the banks got their cases thrown out and a third case was voluntarily dropped after the law firm moved for dismissal.

More recently, in November 2023, Williams & Connolly obtained the partial dismissal of a fourth such case for a Heartland-owned bank, and it is now seeking summary judgment on the breach-of-contract claim that remains.

Pulling off these results was significant. Plaintiffs in bank fee class actions are like "lions trying to kind of pick off somebody from the herd," Scarborough said. "It's a volume business, and they rarely get much pushback because it's much cheaper to settle than to litigate. To Heartland's credit, they chose to litigate."

But litigating these types of cases can be tough — when banks move for dismissal, Scarborough said they are denied the vast majority of the time. That makes the firm's record in the Heartland cases no trivial matter.

"Here, to get the dismissals that we did, and to be positioned where we are very far down the line at the summary judgment stage [in another case], it's something that sets us apart," he said. "It really showcases how effective advocacy can help you achieve your goals."

--Editing by Alyssa Miller.