

Frank A. Hirsch, Jr.

Partner

919.862.2278

frank.hirsch@alston.com

Raleigh | 555 Fayetteville Street, Suite 600 | Raleigh, NC 27601-3034



Frank Hirsch is a partner in the Litigation & Trial Practice Group and co-chair of the firm's Financial Services Litigation team. He focuses on business litigation and class actions affecting the financial services industry. He also handles antitrust/unfair competition, abusive or deceptive trade practices and business tort matters, including cases consolidated by the panel on multidistrict litigation (MDL). Mr. Hirsch has defended numerous class actions in more than 20 states. He handles cases concerning a variety of state and federal statutes, including TILA, HOEPA, RESPA, FCRA, ECOA, FDCPA, FHA, SCRA, EFTA, TCPA and UDAAP, and usury and consumer fraud regulations.

Mr. Hirsch is admitted to practice before the three federal district courts of North Carolina, the Fourth Circuit, Sixth Circuit and Federal Circuit Courts of Appeals and U.S. Supreme Court. He is listed in *The Best Lawyers in America*[®] for financial services litigation and is a member of the American College of Consumer Financial Services Lawyers (ACCFSL) and the International Association of Defense Counsel (IADC).

He also handles state and federal banking, servicing, insurance and consumer lending regulatory investigations as well as enforcement actions (including state banking commission, ACI and appraisal board issues) and CFPB inquiries initiatives.

Representative Experience

- Following the "robo-signing" servicing crisis in 2010, he acted as lead independent legal counsel to the testing consultant for four of the 16 foreclosure review process look-backs (the Independent Foreclosure Reviews) mandated by the Office of the Comptroller of the Currency (OCC) and Federal Reserve Bank (FRB) pursuant to consent orders signed in April 2011. He advised concerning the propriety of default servicing, loan modification and foreclosure practices of national servicers One West Bank, Goldman Sachs (Litton Loan Servicing), Morgan Stanley (Saxon Servicing) and Lehman Brothers (Aurora Loan Services). Counseling included the development of detailed test plans for analyzing the legal requirements around default servicing and the steps into the foreclosure processes required by all 50 states and the District of Columbia and the development of separate test plans regarding the legal requirements imposed by various federal laws and housing programs, as well as the legal limitations on fees and costs associated with foreclosures. Alston & Bird was the only law firm to have been approved by both the OCC and the FRB to act as independent counsel to an independent consultant regarding the default servicing and foreclosure process testing four separate servicers—two regulated by the OCC and two regulated by the FRB.
- Defended a furniture component and integrated solutions manufacturer in multidistrict litigation (MDL) alleging antitrust price fixing by a group of polyurethane foam manufacturers spanning over a decade of commercial activity. The MDL involves more than 50 direct purchaser class actions, three indirect purchaser class actions and more than 75 direct (non-class) actions alleging price fixing and market allocation conspiracies by all of the major polyurethane foam manufacturers.

- Defended a consumer financial services company in a putative nationwide class action brought by residential home loan mortgagors alleging deceptive marketing and implementation of an interest rate-reset loan feature. Separate class actions were brought in Delaware and in California.
- Defended a residential, nondepository mortgage lender and its foreign subsidiary in a putative class action alleging violations of North Carolina's Unfair and Deceptive Trade Practices Act and North Carolina Fair Debt Collection Practices Act and breach of contract arising out of alleged force-placed hazard and flood insurance. This case was designated as an exceptional case and assigned to a special superior court judge for handling due to the involvement of unique jurisdictional issues relating to outsourced work performed by the client's foreign subsidiary. The case was voluntarily dismissed after our motion to deny class certification was affirmed.
- Counseled a regional bank on fiduciary responsibility, regulatory matters and potential liability on claims by shareholders, federal and state banking agencies and other parties while the bank was still open. Following closure, represented the individual directors and officers with regard to claims and investigations by the FDIC and other claimants.
- Represented the individual directors and officers of a bank with regard to an FDIC investigation and threatened lawsuit.
- Defended a top nationwide consumer financial services lender in a consumer class action case alleging that the client made deceptive payday loans to over 100,000 North Carolina residents. The case was settled following a briefing and oral argument before the North Carolina Court of Appeals concerning the invalidation of an arbitration clause and order concerning class certification and personal jurisdiction.
- Represented a major bank in a bank-owned life insurance (BOLI) investment dispute regarding the bank's investment in a fund which went under in 2007. The bank sought over \$40 million in damages due to alleged breach of contract and negligence disputes concerning the terms of the Private Placement Memorandum and associated Stable Value Agreement intended to protect the bank from market value swings and drops.
- Filed an amicus brief on behalf of the Structured Finance Industry Group trade organization to the U.S. Supreme Court addressing the capital markets industry's strong opinion that the three-year right of rescission in the Truth in Lending Act (TILA) statute is a hard and fast deadline for filing suit and not an open-ended right triggered by written notification, as the Consumer Financial Protection Bureau (CFPB) recently advocated. The eight circuits that have weighed in on the question have fallen into two camps, reaching opposite conclusions. The Third, Fourth and Eleventh Circuits have held that written notification is sufficient, while the First, Sixth, Ninth and Tenth Circuits held that a lawsuit must be filed within the three-year period.
- Acted as national coordinating counsel for a national mortgage servicer in multiple problem foreclosure cases in the Northern District of Illinois, Southern District of New York (White Plains), Los Angeles Superior Court and state court disputes in Greensboro, North Carolina, Boise, Idaho, and Edmund, Oklahoma. These cases involved quiet title actions, claims involving Servicemembers Civil Relief Act (SCRA) protections, wrongful foreclosure, UDAAP violations, unconscionability and conspiracy to make unaffordable loans.
- Defended a major loan servicing company in put-back litigation in which over 1,700 loans were the subject of multiple repurchase demands by an investor.
- Defended a major loan servicing company in mortgage put-back litigation in which over 800 loans were identified in multiple repurchase demands by an investor.
- Defended a major loan servicing company in put-back litigation in which hundreds of loans were purportedly in breach of multiple provisions of the loan agreements.

Publications & Presentations

Publications

- Regional & Community Banking - February 2019
- “No *Spokeo* Redux, No Federal Circuit Unanimity for FCRA Class-Action Standing,” *Consumer Financial Services Law Report*, Vol. 21, No. 17, March 6, 2018.
- “The CFPB Final Rule on Arbitration: This Game is Far From Over,” *Consumer Financial Services Law Report*, Vol. 21, No. 8, August 29, 2017.
- “Incentive-Based Compensation Programs: The Consumer Financial Protection Bureau’s Position,” *Employee Benefit Plan Review*, June 2017.
- “Focusing on Significant Caselaw and Emerging Trends,” *Consumer Financial Services Law Report*, Vol. 20, No. 20, April 11, 2017.
- “PHH Corp. Finds Temporary Respite in DC Circuit’s RESPA Ruling,” *Consumer Financial Services Law Report*, Vol. 20, No. 11, November 6, 2016.
- “The *Spokeo* Result: Who’s Peddling Uphill and Who’s Just Coasting Down,” *Consumer Financial Services Law Report*, Vol. 20, No. 9, September 25, 2016.
- “Disparate-Impact Litigation Trends Following *Inclusive Communities*,” *Consumer Financial Services Law Report*, Vol. 19, No. 21, May 1, 2016.
- “The CRA and Local Laws: New York City’s RBA Falls to Preemption Challenge,” *Consumer Financial Services Law Report*, Vol. 19, No. 9, September 25, 2015.
- “The CRA and Local Laws: New York City’s RBA Falls to Preemption Challenge,” *Commercial Lending Litigation News*, Vol. 28, No. 11, September 20, 2015.
- “FCA and Fraudulent FHA Loan Underwriting: Quicken Balks at HUD/DOJ Settlement Demands,” *Consumer Financial Services Law Report*, Vol. 19, Issue 6, July 24, 2015.
- “Litigation Trends Under the TCPA,” *Consumer Financial Services Law Report*, Vol. 18, Issue 20, April 10, 2015.
- “Life After *Jesinoski*: The New ‘Wild West’ of TILA Rescission,” *Consumer Financial Service Law Report*, February 13, 2015.
- “SCOTUS Questions TILA Rescission Rights,” *Consumer Financial Services Law Report*, January 16, 2015.
- “The Recent DC Federal Court Decision in *American Insurance* Rejecting the HUD Proposed Rule on Use of the Disparate Impact Theory to Establish Discrimination Violations Where Intent Is Absent,” *Consumer Financial Services Law Report*, November 11, 2014.
- “Rule 23’s Ascertainability Requirement: A Powerful Defense to Class Certification,” *IADC Community Newsletter*, Class Actions and Multi-Party Litigation, October 1, 2014.
- “The Impact of Noel Canning on Richard Cordray’s Directorship of the CFPB and on CFPB Activity Post Appointment,” *Financial Fraud Law Report*, June 2013.
- “How *Noel Canning* May Impact the CFPB, Richard Cordray, and Consumer Financial Services,” *Commercial Lending Litigation News*, March 8, 2013.
- “The CFPB Appointment of Richard Cordray as Director Clouded by Noel Canning Decision in DC Circuit,” *Consumer Financial Services Law Report*, January 2013.

- “False Claims Act/Qui Tam Actions Involving the Residential Mortgage Business,” (Government Guarantee Programs and Loan Modification Programs) *Consumer Financial Services Law Report*, September 2012.
- “FCA Risks for Mortgage Servicers Resides in Borrower Loan Mod Fraud,” *Consumer Financial Services Law Report*, Volume 16, Issue 6, August 28, 2012.
- “Lender-Placed Insurance Practices Under Attack from Multiple Directions,” *Consumer Financial Services Law Report*, Vol. 15, Issue 18, April 10, 2012.
- “The Serviceman’s Civil Relief Act (SCRA) Enforcement Trends,” *Consumer Financial Services Law Report*, September 2011.
- “ATM Fee Notice Class Actions; Professional Plaintiffs and Possible Defenses,” *Consumer Financial Services Law Report*, Vol. 15, Issue 4, Jul. 18, 2011.
- “The Electronic Funds Transfer Act (EFTA) and ATM Fee Posted-Notice Class Actions,” *Consumer Financial Services Law Report*, June 2011.
- “Richard Cordray’s Ohio AG Experience as a Lens for His Focus as New Enforcement Chief at the CFPB,” *Consumer Financial Services Law Report*, February 2011.
- “First Wave of Foreclosure Documentation Class Actions Come Ashore,” *Consumer Financial Services Law Report*, Vol. 14, Issue 12, November 24, 2010.
- “Aiding and Abetting Fraudulent or Predatory Lending—Where Is the Law Three Years After Lehman’s Liability Was Upheld by the Ninth Circuit?,” *Banking and Financial Services Policy Report*, July 2010.
- “Arbitrations as ‘a Matter of Consent, Not Coercion’: The Impact of Stolt-Nielsen and American Express on Class Action Waivers,” *Consumer Financial Services Law Report*, Vol. 14, Issue 1, May 26, 2010.

Professional & Community Engagement

- 2013-14 Banking *Law360* Editorial Advisory Board
- North Carolina State Bar
- Financial Services Advisors Board for *Consumer Financial Services Law Report*
- International Association of Defense Counsel (IADC), including the subcommittees on class action and business litigation.
- American College of Consumer Financial Services Lawyers
- Chair, IADC Subcommittee of the Class Actions and Multi Party Litigation Committee (2012 – Present)
- Advisory Board, North Carolina Center for Banking and Finance at The University of North Carolina School of Law (2000 – Present)
- Affiliate Member, Mortgage Bankers Association
- Affiliate Member, North Carolina Bankers Association
- ABA Litigation Section Class Actions & Derivative Suits Committee; Business Law Section Consumer Financial Services, Banking Law, Business and Corporate Litigation and Commercial Finance Committees

Education

- Vanderbilt University (J.D., 1986)
- The University of North Carolina at Chapel Hill (B.A., 1983)

Admitted to Practice

- North Carolina

Related Services

Litigation | Commercial | Class Action & Multidistrict Litigation | Financial Services Litigation | Consumer Financial Services | Structured & Warehouse Finance