

Winston Secures Appellate Victory for Major Banks

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On Friday, August 26, 2011, the firm won a significant victory for clients Wachovia, Wells Fargo and Sun Trust, as well as more than 30 other bank defendants in the U.S. Court of Appeals for the Sixth Circuit. The banks were named as defendants in three putative class actions that sought to hold the banks liable under state fraud and UCC laws for tens of millions of dollars the class plaintiffs lost when they invested in a Ponzi scheme run by a judgment-proof individual convicted of securities fraud and other crimes. All but one of the banks won summary judgment on statute of limitations and other legal grounds, and the defendant that proceeded to trial prevailed on the merits.

In a published opinion covering all three cases, the Sixth Circuit affirmed on the limitations grounds Winston argued on behalf of all the bank defendants in the lead limitations case, *Loyd v. Huntington Nat'l Bank et. al.* The ruling is significant in two respects. *First*, it disposed of multiple class actions that, if successful, would have used state fraud and banking laws to make banks the *de facto* insurers of third party investments in business transactions processed through standard commercial checking accounts. *Second*, the Court accepted the banks' argument that the discovery rule did not apply to the limitations periods governing their UCC claims, and held that the two-year limitations period applicable to securities fraud claims governed what the plaintiffs attempted to style as common law fraud claims subject to a longer limitations period and discovery rule. Accordingly, the opinion provides important clarity on the time periods that will govern any future attempts to assert the relevant commercial and securities fraud claims against banks or other defendants.

Jack Knight briefed the appeal and positioned Winston to argue the *Loyd* case on behalf of all the bank defendants in the Sixth Circuit.

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