

INSIGHTS

Class Actions Begin: Plaintiffs Target Banks for PPP Loan Processing

April 22, 2020

By: [Bryan S. Dumesnil](#), [Rachel B. Goldman](#), [David A. Shargel](#), [David J. Ball](#), [William S. Anderson](#), and [Jason M. Jean Jonathon K. Hance Joseph Lund Lasher](#)

A number of class-action lawsuits have been filed targeting national and community banks for their processing of loans under the Small Business Administration's Paycheck Protection Program (PPP). It is not surprising that disputes have already arisen, given the swift creation of the vital relief program and equally rapid depletion of the \$349 billion in initial funding. The suits allege that banks violated the CARES Act and state law by prioritizing high-value and existing customers over other small businesses. More suits are likely to follow, whether based on similar theories or new ones that arise out of the next round of funding.

Plaintiffs in these class actions have accused banks of inappropriately processing and funding larger loans for "bigger business" clients and favoring current customers over other applicants who were unable to obtain loans before the funding ran out. One of the first class actions, filed in federal court in Maryland, sought a temporary restraining order and preliminary injunction to prevent banks from prioritizing current bank customers over individuals and businesses that were not current customers of the bank. The court denied plaintiffs' request for emergency relief, concluded that there is no private right of action under the CARES Act, and found that plaintiffs' claims were unlikely to survive. See [here](#) for a link to the decision. Plaintiffs have appealed to the Fourth Circuit. Two similar class actions have been filed in Texas federal court.

Another class action was filed this week in state court in Texas against a community bank, alleging fraud, breach of contract, breach of fiduciary duty, negligence and violations of the Texas Deceptive Trade Practices Act, all arising out of claims that the bank gave preference to customers eligible for larger loans in order to obtain more lucrative fees. Similarly, several small businesses have filed federal class actions in California and New York, accusing banks of false advertising, fraud, violations of state unfair competition law and deceptive trade practices, among others. Additional disputes are likely to arise as small businesses continue to face unprecedented circumstances; reportedly up to 80% of small businesses were unable to obtain loans during the first round of the program.

Attorneys at Bracewell are experienced in representing and guiding financial institutions through complex disputes and litigation, including class actions such as these. Additionally, Bracewell has assembled a multidisciplinary task force that draws on the firm's deep experience across all practice areas and industries to provide practical, strategic advice to clients facing difficult situations as this global crisis continues to unfold. The firm has [a dedicated resource page](#) where insights, program guidance, and regular updates on CARES Act program

developments can be found.

Our cross-disciplinary team is actively helping numerous clients navigate the many and evolving issues they are facing. Your Bracewell point of contact can help you learn more.