

## Jon S. Hubbard

Partner

Richmond

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Jon is an attorney with substantial experience in the financial services and insurance industries. He represents clients across the U.S. in class actions, consumer litigation, contract and insurance disputes, pre-litigation analysis, and regulatory compliance.

### OVERVIEW

Jon defends and advises clients in connection with federal and state consumer laws, including claims and compliance issues involving the Equal Credit Opportunity Act (ECOA) and Regulation B, Fair Housing Act (FHA), Fair Credit Reporting Act (FCRA) and Regulation V, Fair Debt Collection Practices Act (FDCPA), Truth in Lending Act (TILA) and Regulation Z, Real Estate Settlement Practices Act (RESPA) and Regulation X, and Homeowners Protection Act (HPA), as well as state law equivalents and various unfair, deceptive, or abusive acts or practices (UDAAP) laws. He also regularly represents insurers in claims interpleading policy funds into federal and state courts' registries. His work has included defending clients in state and federal courts across the U.S., including New York, California, Illinois, Florida, Texas, Virginia, Pennsylvania, Maryland, West Virginia, North Carolina, Georgia, Kentucky, Wisconsin, Oregon, Washington, Louisiana, and the District of Columbia.

Prior to rejoining the firm in 2015, Jon served as an assistant general counsel in Capital One's litigation department, where he managed a team focusing on mortgage litigation. His practice included representing Capital One on a national basis in residential mortgage-backed securities (RMBS) disputes and lawsuits and individual and class action consumer litigation. He also helped prepare for and defend litigation and compliance issues related to new and evolving mortgage origination and servicing laws and regulations, including the CFPB's mortgage origination and servicing rules, as well as Homeowner Bill of Rights legislation in California, Nevada, and other states. Further, Jon has managed disputes and issues related to mortgage insurance rescissions and claim denials, servicing and sub-servicing obligations, and mortgage servicing rights (MSR) transfers.

### REPRESENTATIVE MATTERS

#### Consumer Litigation

- Defended a lender against a borrower's attempt to rescind its mortgage loan by claiming the lender's material disclosures were inaccurate because they improperly excluded certain charges. The district court granted defendant's motion to dismiss, which the appellate court affirmed.
- Obtained dismissal of a borrower's claim of nonreceipt of notice of the right to rescind inaccurate material disclosures.

- Secured a dismissal of a borrower's TILA claim based on alleged improper use of an H-8 notice form rather than an H-9 notice form.
- Convinced the district court to dismiss claims to void a foreclosure sale based on several legal theories, including FDCPA claims and an attack on MERS's authority to foreclose.
- Obtained a dismissal of a borrower's FCRA claims and foiled its attempt to rescind a mortgage pursuant to TILA as barred by the three-year statute of repose.
- Secured the district court's dismissal before discovery of a borrower's lawsuit attempting to state a claim for violation of TILA based on an allegedly inaccurate computation of the finance charge.
- Obtained dismissal of a borrower's RESPA claims and post-foreclosure claims on the grounds that the latter were time-barred by TILA and could not be asserted against the loan servicer or after the foreclosure sale of the property, among other grounds.
- Successfully argued for dismissal of a borrower's claim for damages and rescission under TILA because the claim was time-barred and could not be asserted against the servicer, and the alleged violation was not "apparent on the face of the documents."
- Convinced the district court to dismiss the borrower's rescission claim because it was time-barred by the three-year statute of repose.
- Obtained dismissal of a borrower's TILA and HOEPA claims for failure to state a claim. The court ruled that the originator's use of an H-8 notice form rather than an H-9 notice form did not violate TILA.

## **Mortgage Litigation**

- Obtained dismissal of dozens of lawsuits in state and federal courts seeking to void or delay foreclosure on residential and commercial properties. These claims are usually based on several different legal theories and claims, including claims under TILA (Reg. Z), FDCPA, FCRA, ECOA (Reg. B), and RESPA (Reg. X), and statutory claims and common law theories.

## **ERISA Litigation**

- Obtained a district court ruling, affirmed on appeal, that ERISA governed the AD&D beneficiaries' claims because the employer maintained an employee welfare benefit plan; further, the court affirmed the insurer's denial of AD&D benefits based on the insured's drunk driving.
- Secured the Fourth Circuit's affirmation of the district court's dismissal of an ERISA long-term disability claim based on the policy's three-year limitation period.
- Convinced the Fourth Circuit to affirm the district court's dismissal of an ERISA life insurance claim based on the nonbeneficiary claimant's lack of standing.
- Successfully argued for dismissal of the claimants' non-ERISA federal and state law claims against the insurer as pre-empted by ERISA.
- Obtained a district court ruling dismissing a claim for ERISA long-term disability benefits because claimant had failed to exhaust her administrative remedies pursuant to the plan; she also failed to appeal the insurer's denial decision within 180 days.
- Convinced a district court to dismiss a claim for ERISA life insurance benefits and uphold the insurer's decision to rescind the policy, on the basis that the decision was not an abuse of discretion.
- Secured the district court's dismissal of the plaintiff's motion to remand a claim for ERISA AD&D benefits and convinced it to grant insurer's motion to dismiss the state law claims and strike the plaintiff's jury demand.
- Successfully represented ERISA fiduciaries in a federal action to recover overpayments of benefits based on, among other things, SSDI, and individual policies.

## **Complex Litigation and Insurance Claims**

- Obtained dismissal of all of plaintiff's claims in a suit seeking recovery of more than \$2.5 million, including claims for breach of fiduciary duty, constructive fraud, negligence, breach of contract, conversion, accounting, surcharge, and falsification.
- Convinced the court to dismiss on summary judgment, based on the contract terms and common law principles, plaintiff borrowers' claims for breach of contract, fraud, unjust enrichment, and quiet title arising out of mortgage origination fees.
- Secured from the circuit court dismissal of an insurer from the lawsuit and of all claims against the insurer arising out of a \$500,000 life insurance policy.
- Obtained a verdict in favor of a medical college, resulting in an award of more than \$800,000. The lawsuit involved a dispute over a last will and testament.

## AWARDS

- Virginia Rising Star in Consumer Law, *Law & Politics' Virginia Super Lawyers* (2009, 2010, 2011)

## ALL AREAS OF FOCUS

- [Class Action](#)
- [Consumer Financial Services](#)
- [Fair Lending](#)
- [Financial Services](#)
- [Financial Services Litigation](#)
- [Litigation + Trial](#)

## PROFESSIONAL EXPERIENCE

- Director; Assistant general counsel, Capital One, 2011-2015

## EDUCATION AND CERTIFICATIONS

### EDUCATION

- University of Richmond School of Law, J.D., *cum laude*, manuscript editor, *University of Richmond Law Review*
- James Madison University, B.A.

### BAR ADMISSIONS

- Virginia

### COURT ADMISSIONS

- U.S. Court of Appeals, Fourth Circuit
- U.S. District Court, Eastern District of Virginia
- U.S. District Court, Western District of Virginia
- U.S. Bankruptcy Court, Western District of Virginia
- U.S. Bankruptcy Court, Eastern District of Virginia

## SPEAKING ENGAGEMENTS

- Speaker, "Lessons Learned from the Great Recession," Troutman Sanders Webinar, April 16, 2020.
- Speaker, "Structured Data & Databases in eDiscovery," Public Webinar and CLE, Richmond, VA, October 2017.
- Speaker, "2017 Residential Mortgage Litigation Survey: Mortgage Litigators Discuss the Current State of Individual and Class Action Consumer Mortgage Claims," Public Webinar and CLE, Richmond, VA, October 2017.
- Speaker, "Post-Spokeo Survey – An Analysis of Trends and Developments in the Courts," Troutman Sanders Consumer Financial Services Webinar Series, Richmond, VA, April 19, 2017.
- Speaker, "Small Business Lending & Workouts: Consumer Protection Issues," Private Client Presentation and CLE, New York, NY, March 2017.
- Speaker, "Taking a Mortgage Servicing Case to Trial – A Panel of Litigators Shares Proven Strategies for All Stages of the Litigation and Appeals Process," American Conference Institute's 6th Bank & Non-Bank Forum on Mortgage Servicing Compliance, Washington, D.C., Dec. 1, 2016.
- Speaker, "What's Hot in Mortgage Servicing Litigation? – Examining the Latest Litigation Trends, Fallout from Recent Supreme Court Decisions and Tips and Strategies for the Litigation and Appeals Process," American Conference Institute's 5th Bank & Non-Bank Forum on Mortgage Servicing Compliance, Washington, D.C., November 2015.
- Speaker, "Mortgage Servicing Challenges: Fallout from the Servicing Rules, Issues Arising From Mortgage Servicing Transfers, Litigation and Enforcement Concerns, Servicer Liability Under the FDCPA and the FCRA, Determining and Implementing Best Practices, Defending Against Class Actions and New and Innovative Borrower Claims, and More," American Conference Institute's 18th National Forum on Residential Mortgage Litigation, Dallas, TX, September 2015.
- Speaker, "Mortgage Litigation 101: Non-judicial Foreclosure States," Private Client Presentation and CLE, Richmond, VA, June 2015.
- Panelist, "In-House Insights: How Corporate Counsel Are Managing Consumer Finance Claims/Class Actions," American Conference Institute's 20th National Forum on Consumer Finance Class Actions & Litigation, San Francisco, CA, October 2014.

## PUBLICATIONS

- Co-author, "[Troutman Pepper Publishes 2023 Consumer Financial Services Year in Review and A Look Ahead](#)," *Troutman Pepper*, February 1, 2024.
- Co-author, "[Another California Court of Appeals Weighs In on Availability of Attorneys' Fees Under the FTC's Holder Rule](#)," *Troutman Pepper*, March 24, 2022.
- Co-author, "[2021 Consumer Financial Services Year in Review & A Look Ahead](#)," *Troutman Pepper*, January 28, 2022.
- Co-author, "[Notice and Disclosure Obligations: Virginia Consumer Data Protection Act Series \(Part Three\)](#)," *Troutman Pepper*, March 18, 2021.
- Co-author, "[2019 Consumer Financial Services Year in Review & A Look Ahead](#)," *Troutman Sanders*, February 24, 2020.
- Co-author, "[2018 Consumer Financial Services Year in Review & A Look Ahead](#)," *Troutman Sanders*, January 28, 2019.
- Co-author, "Civil Practice and Procedure," *University of Richmond Law Review: Annual Survey 2007*, 42 Rich. L. Rev. 229 (2007).