
The Consumer Finance Podcast – Lions, Tigers, and Sovereign Citizens, Oh My! UCC and Banking Litigation Trends and a 2026 Forecast

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Guest: Mary Zinsner and Heryka Knoespel

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Chris Willis (00:05):

Welcome to [The Consumer Finance Podcast](#). I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice. And today's episode is another in our Year in Review and Look Ahead series where we're going to be talking about UCC and banking litigation in 2025 and what's to come in 2026. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, [TroutmanFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#). And of course, don't forget about all of our other great podcasts: the [FCRA Focus](#), [The Crypto Exchange](#), [Payments Pros](#), and, of course, [Moving the Metal](#). All of those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your podcast platform of choice and tell us how we're doing. Now, as I said, today we're going to be doing a Year in Review and look ahead for UCC and banking litigation. And joining me to talk about that are two of my partners who spend a lot of their time doing that kind of litigation, Mary Zinsner and Heryka Knoespel. Mary, Heryka, thanks for being on the podcast today.

Mary Zinsner (01:07):

Thanks for having us, Chris. It's good to be back.

Heryka Knoespel (01:10):

Great to be here with you, Chris.

Chris Willis (01:12):

It's great to have both of you back because, of course, you've both been on the podcast many times before. Heryka, let me start with you. Let's just get straight into it. What did you see being the major trends in UCC and banking litigation in 2025? Tell me what you lived through.

Heryka Knoespel (01:26):

Well, we lived through a lot, Chris, but I'll keep it succinct for the opening. As bank litigators, we saw a steady flow of cases involving retail bank and deposit issues in 2025, with plaintiffs really advancing unconventional theories to recover funds. The courts largely reinforced traditional UCC principles, rejected attempts by sovereign citizens to manufacture contractual or payment obligations, and issued a lot of really good, important wins for banks. So, there were some really interesting cases involving third-party required payments to a holder in due course seeking redemption, clarifications of the actual knowledge standard, and breach of contract claims

related to sovereign citizens. But overall, Chris, the big picture takeaway for 2025 was that it was a good year for banks, and those trends are expected to continue in 2026.

Chris Willis (02:18):

And of course, we smile extra big when there's a good year for banks since those are our clients and we love them so much. Mary, let me turn to you. In the written Year in Review and Look Ahead publication that we published, and in particular your section of it, one of the cases is a Maryland Supreme Court decision involving a check cashing business asserting holder in due course rights. That seems like a blast from the past from law school for me. Can you tell the audience a little bit more about that?

Mary Zinsner (02:44):

Sure. Thanks for asking about that one, Chris. It's actually a pretty interesting case. And just by way of backdrop, in reviewing the opinions issued by courts in the area of UCC and banking in 2025, we really tried to focus on decisions from the states' highest courts as well as federal court of appeals so that we could really show that these issues are being considered at the highest level within states and within our US Court of Appeals. And so this decision from the Maryland Supreme Court really stood out to us. It's unusual for a state's highest court to take a case involving UCC issues. And this case involved a check cashing business, and we've been seeing an increase in the number of cases brought by check cashing businesses. In this case, the check cashing business actually won. And the Supreme Court of Maryland wrote a really pretty lengthy opinion delving into holder in due course issues. There was a 26-page opinion and then a 12-page dissent. They really dug in. I'll just briefly cover the facts, but essentially the check cashing business cashed multiple State of Maryland checks that had already been paid via mobile deposit by the customer or replacement checks.

Mary Zinsner (03:58):

And so they'd been paid, and when the check cashing business presented them for payment to the State of Maryland, Maryland refused to pay them and basically defended on the grounds that they'd already paid these checks. And they also invoked the argument that they were entitled to rely on the defense of sovereign immunity. And so the case really dived into that issue of whether could the state invoke sovereign immunity, and the issue turned on a state statute that carves contracts out of sovereign immunity, basically says that when there's a contract at stake, Maryland can't rely on the defense of sovereign immunity. And it's interesting because the State of Maryland agreed that checks are contracts, but they argued that contract was with the original payee and not the check cashing business. And so they argued that because it was the check cashing business was coming in as a holder in due course rather than the original payee, there was no contract directly between Maryland and that check cashing business. So it was a pretty novel argument. But the court really dug into sovereign immunity and holder in due course and what is a check and what is a contract, and basically came down to a contract is a contract and that this check was a contract and that it fell within the language of the Maryland statute and that the state couldn't escape liability using sovereign immunity.

Mary Zinsner (05:31):

And the dissenting opinion is interesting because it argued that the statutory language was unambiguous and it didn't include an action by a holder in due course to enforce payment of a check and made the point that the state had already been paid. Plus, there was no consideration, there was none of that typical elements of a contract claim like offer, acceptance between the State of Maryland and the check cashing business. But nevertheless, the Supreme Court of Maryland in its infinite wisdom held that Maryland couldn't invoke the sovereign immunity provision. And the case is a great study on checks, on negotiable instruments, on the UCC, and the holder in due course argument. So if you like that stuff, I encourage you to take a look at it.

Chris Willis (06:17):

So Mary, it's an interesting result. What are the practical implications of a decision like that? I mean, why can't everyone now just go and remote deposit their checks and then take them to a check casher and get paid twice? What's to stop people from doing that?

Mary Zinsner (06:30):

Well, a lot of people are doing that. And usually what you do is you fight by arguing that the check cashing business is not a holder in due course, that there was some indicia on the check showing it was deposited once or something like that. It was deposited already and the check cashing company knew it. So it really comes down to how good of a holder in due course is the check cashing business. And we've seen a lot more cases in the past year filed by check cashing businesses and for kind of the depository bank fighting against those claims. We encourage our clients to go back and fight the check cashing business and really challenge, are they truly a holder in due course? And what indicia in the instrument put them on notice that this had already been deposited? So it really, again, it turns on how good of a holder in due course this check cashing business really is.

Chris Willis (07:27):

Okay, thanks. All right Heryka, I'm almost afraid to ask you this next question. I actually am afraid to ask you this next question, but I feel I must anyway. You earlier mentioned sovereign citizens, which sent a tingle down my spine. Would you for the audience, though, tell us what is the sovereign citizen trend, in case anyone has not noticed it? And more particularly, how are courts dealing with the claims of sovereign citizens and their attempts to use UCC filings and forms to create obligations out of thin air? I know I'm gonna enjoy this answer.

Heryka Knoespel (07:57):

So for our listeners who have heard about this movement, you likely had the same reaction that Chris did. You also got a tingle down your spine and are shaking your head right now. And for the listeners who have not yet heard about it, you'll be shaking your head soon because it is a really mind-boggling movement. So the sovereign citizen movement is a loose group of anti-government activists, conspiracy theorists, vexatious litigants, tax protesters, and others who

believe they are not subject to government and law. They frequently advance theories distorting common law to advance their own interests. For example, Chris, as you've probably seen, a common sovereign citizen strategy is to send a self-styled agreement and then claim that the receiving party's silence equals acceptance, or filing their own UCC-1 financing statement and asserting that they created enforceable obligations. Which is actually exactly what we saw in a Third Circuit decision that we discussed in our article. In that case, the plaintiff had mailed a vehicle purchase agreement and security agreement to a dealership, claimed it was a negotiable instrument and full payment. Of course, the dealership did not sign, respond, or deliver a vehicle, and then plaintiff filed a UCC-1 and sued for breach of contract and breach of the implied covenant.

Heryka Knoespel (09:19):

The court's ruling in that case was a really good example of courts rejecting the sovereign citizen movement, specifically this effort to turn unilateral UCC filings and one-sided agreements into binding contracts or security interests. And the court's reasoning there was really straightforward. The court reaffirmed that the UCC forms operate within the ordinary contract law and cannot substitute mutual assent and an underlying agreement. So in that case, there simply was no mutual assent. The silence did not equal consent, and the filing of the UCC-1 did not create a security interest or prove that a contract existed. So that kind of tackles part one of your question, Chris. And then part two, what trends are we seeing? The courts are really rejecting these types of sovereign citizen arguments. Finance and UCC concepts cannot be repurposed to fabricate debts or payment obligations. And the practical angle really is, since we're anticipating an increase in these types of tactics as part of this broader sovereign citizen movement, we really want to recognize these types of filings immediately when they're served. Okay, this is a sovereign citizen, it's legally defective. But we want everyone on the defense side to continue to address these cases very carefully so we continue our streak of creating good case law.

Chris Willis (10:40):

Okay. Well, I'm very gratified to hear that the courts are rejecting these claims. And now I think it's time for us to turn to another pretty sensitive issue, Mary, and that is something we've discussed before, which is elder financial exploitation. And I know there's a trend for lawyers representing elderly consumers to try to expand the banks' duties to customers in this context, but there was a Fourth Circuit decision that addressed this that you covered in the written year-in-review document that I'd love for you to tell the audience about.

Mary Zinsner (11:11):

Yeah, it's a great opinion, and I encourage everyone who follows the area of elder financial exploitation and the banks' duties to read it. It really was a great outcome for the banks involved, but candidly, it had very, very sad facts. And the court even noted in the opinion that this case has sad facts, buished capacity from a stroke, who was victimized by a scam by third-party fraudsters and repeatedly wired millions of dollars to overseas banks. And one of the banks reported the customer's situation to Adult Protective Services. Adult Protective Services investigated, but the customer refused the help. He said he was doing what he wanted to do with his money, and so Adult Protective Services closed the case. The bank continued to

process the customer's request and continued to wire money even though it had reported it to Adult Protective Services. And then after the gentleman died, somebody qualified for his estate and sued the bank, arguing that by reporting the actions to Adult Protective Services, the bank had assumed a duty of care and breached that duty by continuing to undertake transactions the elderly customer had authorized.

Mary Zinsner (12:38):

And the court really dug into the issues. Whenever you have a case involving wires, you automatically need to turn first to Article 4A of the UCC, which the court did. And the court held that Article 4A provides the exclusive rights and remedies for the conduct here. It covered the wire transactions at issue. And because the wires were explicitly authorized by the customer, there was simply no liability on the banks under Article 4A. And then the court turned to the common law theories asserted by the customer's estate. And essentially, the estate had made arguments about negligence and voluntarily assuming duties of care and because of the fact that one of the banks had reported it to Adult Protective Services. But the court really looked at the issue of whether there was a duty of care to really protect the customer from himself and said there wasn't. And if you think about it, the court is absolutely right. Like, when you think about the law of negligence, the law of negligence is in place to protect people from injury to person or property. Like, a bank has a duty not to leave a ladder out in front of a branch that a customer could trip over, and that's a recognized common law duty of care.

Mary Zinsner (13:55):

But there is no assumption of a duty of care to protect a customer really from himself or from third-party fraudsters. The common law just hasn't recognized that. And so the court also found that the bank had not taken charge over the customer or exercised any control over his decisions and really rejected the common law negligence and assumption of duty claims. Interwoven in the customer's claims were arguments based on the Bank Secrecy Act, etc. And as we've reported before on this podcast, the Bank Secrecy Act imposes obligations on banks to report suspicious activities to its regulators and to the government, but not to the customer him or herself or to any family members. And so there are also no private rights of action under the Bank Secrecy Act to create claims, and so there was no claim there. And then the final theory advanced by the estate was that the banks had breached the implied covenant of good faith and fair dealing by allowing these transactions. And the court basically said no, there's no breach of contract, there's no breach of implied covenant of good faith and fair dealing. You can't take an unambiguous contract and create some ambiguity to give rise to an implied covenant of good faith and fair dealing when there was no underlying breach of the contract itself. So it was all in all a really good result for the banks involved and really helped define to have a Fourth Circuit opinion really hitting the nail on the head in the area of potential liability of financial institutions in the area of elder financial exploitation is really helpful for those of us who are defending these claims regularly.

Chris Willis (15:46):

Yeah, that one does sound very interesting. I mean, unfortunate for the plaintiff, of course, but fortunate for the sort of stability and predictability of the banking system and the liabilities under Article 4A. Heryka, let me switch back to you for the last question. Outside of what we've

covered today, do you think there are any other notable items that our clients and other financial institutions, which I like to think of as our future clients, should be on the lookout for in 2026 as it relates to this area, UCC and banking?

Heryka Knoespel (16:14):

That's a great question, Chris. And I think one thing that is top of everyone's mind these days is how quickly AI capabilities are starting to take off. And so we really need to stay vigilant about increasingly sophisticated scams in the financial sector that will continue to generate litigation and continue to ground ourselves in the predictability in the application of the UCC. As we continue to see these evolving scams, for example, continuing to just anchor ourselves there. We discussed already the growing popularity of the sovereign citizen movement, which will likely continue, and Mary discussed the elder financial exploitation cases, which are likely to continue, including the ones that are in our article, but others that we weren't able to touch upon due to the space constraints. But ultimately, we really want to see the courts continuing to apply these long-standing UCC defenses, including preemption and the various safe harbor provisions, while enforcing the statute's plain language and the consumer protections it expressly provides. As everything continues to change in 2026, we want to just have that headline always be the UCC is predictable and it's gonna give us the same result every time, even as things change throughout the year. Of course, we're always here to help in any aspects of banking and UCC litigation. We have a deep bench here at Troutman Pepper Locke, so we welcome any questions about emerging issues or potential disputes. We're here for all of our listeners, so please, please reach out if we can help you in any way. And thanks again, Chris, for having us on today.

Chris Willis (17:55):

Well, thank both of you for being here and not only for being on the podcast, but also writing that section, this same section in our Year in Review and Look Ahead document, which of course people can obtain on the Troutman Pepper Locke website. So Mary, Heryka, thanks for being here, and of course thanks to our audience for listening as well. Let me remind you to visit and subscribe to our podcasts, [TroutmanFinancialServices.com](https://www.troutmanfinancialservices.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.ConsumerFinancialServicesLawMonitor.com). While you're at it, why not visit us on the web at the website I mentioned a minute ago, [troutman.com](https://www.troutman.com), and add yourself to our Consumer Financial Services email list. That way we can send you copies of our alerts and advisories, like the one we did for the Year in Review publication that we've been talking about, as well as invitations to our occasional industry-only webinars. And of course, stay tuned for a great new episode of this podcast every Thursday afternoon. Thank you all for listening.

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