

David S.S. Hamilton, ASSOCIATE

David Hamilton is a creative and energetic commercial litigator and data privacy lawyer.

David's complex commercial litigation practice focuses on banking and secured transactions litigation, class action defense, and representation in government investigations, involving multinational financial institutions, banks, telecommunication companies, Fortune 500 companies, start-ups and technology companies. David's global privacy and data security practice spans multiple sectors (including banking, technology and telecommunications) and neatly compliments his deep experience in consumer regulatory compliance and cutting-edge technology law.



David is accredited by the International Association of Privacy Professionals ("IAPP") as a certified information privacy professional ("CIPP") in the U.S. private sector (CIPP/US). David has been recognized as a Super Lawyer, Rising Star, in 2015, 2016, 2017 and 2018 and speaks frequently on litigation, privacy law and artificial intelligence issues to the New York State Bar.

PRACTICE AREAS:

Complex Commercial Litigation – extensive experience in both the prosecution and defense of commercial claims, including securities fraud, common law fraud, theft of trade secrets and intellectual property claims, breach of fiduciary duty claims, breach of contract and breach of the covenant of good faith claims.

Data Privacy – David (CIPP/US) advises multinational corporations, startups, and financial services organizations on an array of privacy law issues across multiple jurisdictions. David has drafted and developed comprehensive privacy programs for technology companies, privacy policies for telecommunications companies working with hundreds of millions of subscribers and advises banks and financial institutions on Gramm-Leach-Bliley Act (GLBA) and Right to Financial Privacy Act (RFPA) issues. Recently, David has been advising on GDPR compliance issues.

Bank Defense – David has vast experience in consumer loan defense litigation, having defended numerous banks, mortgage lenders, servicers and investors against claims of mortgage fraud, predatory lending, violations of consumer protection statutes and data breach claims in individual and class actions. In the commercial loan context, David has serious experience litigating claims of lender liability, breaches of complex commercial loan agreements, forged instrument claims, non-recourse carveout guaranties, inter-creditor agreements, loan purchase and servicing agreements.



OUR TEAM

Real Estate Litigation and Workouts – David has a decade of experience of representing financial institutions in banking litigation, real estate litigation, bankruptcy court proceedings, and restructuring both portfolio and CMBS loans, including creative resolution of disputes between and among lenders and borrowers, tranches of noteholders, competing lienors, and servicers. David is adept at using litigation and the bankruptcy code as a tool to leverage and expedite favorable loan workouts.

Technology & Internet Law – David has experience with an array of law and technology issues, counseling on matters related to business formation and operations, intellectual property, and disputes arising from electronic transactions, click-through agreements, SAAS agreements, technology errors, application agreements, artificial intelligence, and IP protection.

E-discovery – David has substantial experience handling e-discovery in litigation of all sizes for banks and corporations. David manages vendor relationships, advises on e-discovery strategy and technology selection and develops review protocols appropriate to each litigation. David is abreast with both current e-discovery technology and the approval of such technology by courts, and recovery of e-discovery expenses using court-approved cost-sharing methods.

REPRESENTATIVE EXPERIENCE:

- Lead counsel successfully defending international “issuing” bank in letter of credit action, winning prompt dismissal of case. *See Navana Logistics Ltd. v. TW Logistics, LLC*, 2016 U.S. Dist. LEXIS 21822 (S.D.N.Y. Feb. 23, 2016).
- First chair representing community bank, obtained \$7 million judgment after trial in a commercial loan action against real estate developers raising fraud, strictissimi juris defenses.
- Developed Privacy Policies of international telecommunications company with hundreds of millions of subscribers.
- Advises banks and financial institutions on privacy issues arising from the Gramm-Leach-Bliley Act (GLBA), Right to Financial Privacy Act (RFPA) and state financial privacy laws, particularly in connection with e-discovery and government investigations.
- Briefed and orally argued consolidated appeals for an international bank in complex consumer class action involving alleged breach of consumer protection statutes.
- Won summary judgment at oral argument, from the bench, for mortgage servicer in insurance dispute, then successfully defended resulting appeal. *See Dichira v. Nawid*, 126 A.D.3d 755 (N.Y. App. Div. 2d Dep't Mar. 11, 2015).
- Lead associate in ZEK team winning summary judgment for an international bank against an international oil company seeking \$45 million in a letter of credit fraud case. *See Societe Anonyme Marocain De L'Industrie Du Raffinage v. Bank of Am. N.A.*, 2016 N.Y. Misc. LEXIS 351 (N.Y. Sup. Ct. Feb. 8, 2016).
- Won sanctions against defendant-debtor at oral argument in New York Supreme Court, Commercial Division in a case for a national bank.



OUR TEAM

- Lead associate in ZEK team defending two national banks in two complex consumer class actions involving judgment enforcement issues. See e.g. Acevado v. Citibank, N.A., 2013 U.S. Dist. LEXIS 38786, *17 (S.D.N.Y. Mar. 20, 2013).
- Lead associate in ZEK team winning summary judgment against guarantor dismissing defenses, which included validity of guaranty, forgery, tortious interference and commercially unreasonable disposition of accounts receivable. Wells Fargo Bank, N.A. v. Bivona & Cohen, P.C., 2015 U.S. Dist. LEXIS 133468 (S.D.N.Y. 2015).
- Serve as key “hotline” advisor to in-house legal team of global bank on day-to-day operations and branch banking problems facing the retail bank, including claims of fraud, U.C.C. and other pre-litigation banking questions.
- Advise technology companies and start-ups as outside general counsel.

TECHNICAL BACKGROUND

David has a background in coding and development. In connection with a GCE Advanced Level Computing qualification gained pre-law school, David used Pascal and Visual Basic to create computer programs for a retail store utilizing databases to maintain inventory. In the early days of the web, David coded, developed and designed commercial websites using HTML and Flash, using Photoshop and other tools for design, implementing web advertising. Prior to joining ZEK, David worked for a large Irish consumer law firm’s technology law team, coding back-end applications and attorney documents using a proprietary platform. More recently, David has coded small apps using Python and Swift. At ZEK, David has applied this knowledge in his Privacy Practice, in e-discovery, and in working with technology companies and banks.