

Aiding and Abetting Claims

Flow of Funds and Asset Tracing Investigations

Global organizations face growing regulatory, economic, and legal challenges as technological advances continue to impact the financial services sector. Changes in organizational structure and aggressive corporate mandates have historically resulted in pressures on employees that may lead to fraud or misconduct. Increasingly, courts are recognizing causes of action against banks for aiding and abetting fraudulent schemes perpetrated by bank clients through accounts serviced by that bank.

FTI Consulting has unparalleled experience with the investigative, analytical, and forensic accounting needs of institutions confronted with increased legal and regulatory scrutiny. Our professionals have been entrusted to support numerous top 10 global financial services providers facing costly claims of aiding and abetting these schemes following the exposure of the fraud and the perpetrators' subsequent descent into bankruptcy. We offer a suite of services designed to promote the rapid analysis of both structured and unstructured data and assist clients in defending against these claims.

Investigation and Flow of Funds Analysis

In the wake of an exposed fraud, liquidators for the bankrupt estate will commonly identify sources for clawing back the funds that were misappropriated from unsuspecting investors. Frequently, one of the first places they turn are the major financial services providers and banking institutions through which the perpetrators funneled the fraudulent funds. FTI Consulting is routinely retained to recover and analyze enterprise-wide data and perform an independent investigation of both the transaction-level detail associated with accounts involved in the fraud, as well as the bank's adherence to contemporaneous regulatory standards in opening and servicing those accounts.

Our experts have extensive experience performing complex asset tracing analysis to determine the originating and beneficiary parties to transactions that flowed through fraudulent accounts. This analysis of the sources and uses of funds can help refute specific claims brought against the bank by liquidators, such as claims relating to the bank's alleged knowledge of particular bad actors or claims that the bank heavily profited from opening and maintaining these accounts. When reviewed in conjunction with banking policies and procedures, this analysis can help shed light on whether the transactional activity should have triggered advanced level review and dispositioning by the bank. By documenting the flow of funds through accounts associated with the fraud, our Data & Analytics professionals paint a picture of the overall account activity and relationships between the accounts, which can then be reviewed for potential red flags in context of the purported use of each account.

Our team also includes professionals who have deep industry experience in the financial services sector, including leading experts in both BSA/AML compliance and federal banking standards. In addition to our capacity to perform multifaceted structured analytics, we provide unstructured data review services to assess the bank's documented policies and procedures around account opening, maintenance, and closing.

Through this review, our experts gather the necessary information to opine on whether the fraudulent accounts were opened in accordance with standard banking practices, and whether the activity in those accounts reflects the purported use of the accounts at the time of account opening. With these insights, our clients can improve their understanding of whether the activity that flowed through these accounts should have resulted in heightened scrutiny by the bank.

FTI Consulting has provided expert testimony in response to various types of claims in prior aiding and abetting cases. Our banking experts have testified at trial regarding the banking industry threshold for a bank's responsibility to identify and investigate evidence of fraud based on patterns of transactional activity. Further, our analytics team has proffered opinions to successfully rebut damage theories presented by plaintiffs in accordance with the bank's role in the scheme. Our ability to offer a comprehensive suite of services in response to claims of aiding and abetting has been of singular importance in propelling successful outcomes for our clients.



CASE STUDY

PRIVILEGED CONSULTING FOR A TOP 5 FINANCIAL SERVICES PROVIDER

SITUATION

FTI Consulting was retained by outside counsel to assist a major banking institution with an investigation of dozens of accounts involved in the operation of a large fraud scheme over a nine-year period. Following an SEC investigation, the entities involved in the scheme were placed into receivership, which is when attention shifted to our client.

OUR ROLE

We led the identification, collection, and consolidation of data from multiple bank sources to create a comprehensive transactional database, upon which we could then perform a flow of funds tracing analysis. The development of this database required advanced technical skills to automate the extraction of transactional data from thousands of PDF bank statements during time periods for which the bank's record retention policy resulted in the purging of electronically-stored transactional data. Upon compiling the final dataset, which contained hundreds of

thousands of transactions over the lifetime of dozens of related accounts, we proceeded to trace the sources and uses of funds that flowed through these accounts in a manner that would provide meaningful insights to both the client and counsel.

OUR IMPACT

Our BSA/AML and banking procedures experts leveraged their review of provided bank policies and account opening documentation to further opine on whether anything in the servicing history of the accounts posed a risk from a litigation perspective. Ultimately, we produced a report of findings that included impactful visuals related to the sources and uses of funds, the velocity of funds entering and subsequently leaving the accounts, and the amount collected by the bank in fees on the accounts, among others. These insights provided invaluable support for the defense ultimately crafted by counsel against the aiding and abetting claims leveled by the receiver.



CASE STUDY

EXPERT TESTIMONY FOR MAJOR GLOBAL BANK

SITUATION

FTI Consulting was retained by outside counsel for a global financial services provider facing claims of aiding and abetting a fraudulent real estate investment scheme. The bank was in active litigation, confronted with separate lawsuits from the liquidators of multiple estates associated with the scheme.

OUR ROLE

Our Data & Analytics team led efforts to collect and extract transactional data from multiple sources for four dozen related accounts. This particular scheme was primarily conducted through the use of custody accounts, which the liquidators claimed should have been used exclusively for the purpose of executing transactions related to the purchase and distribution of real estate-related securities. Among the claims leveraged by the liquidators were that the bank knowingly allowed non-investment related transactions

to flow through the accounts, and that the accounts experienced frequent and extended periods in an overdraft status (which plaintiffs claimed was a red flag the bank should have investigated).

OUR IMPACT

Our work to craft a consolidated database of transactional detail allowed us to evaluate the merit of such claims and advise our client and counsel on potential rebuttal arguments. Further, a leader on our analytics team provided expert testimony rebutting the accuracy and reliability of the damage methodology proposed by plaintiffs' expert, which heavily influenced the judge's acceptance of a Daubert motion that significantly restricted plaintiffs' theory. Our team's ability to leverage advanced technologies to quickly and efficiently analyze thousands of transactional records and evaluate the merit of specific claims against our client were invaluable to the trajectory and outcome of the case.

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