WHAT'S NEW THIS MONTH

FIXING AMERICA’S SURFACE TRANSPORTATION (FAST) ACT: American Bankers Association (ABA) v. United States — ABA and Washington Federal file their opening brief in their joint appeal to the United States Court of Appeals for the Federal Circuit seeking reversal of the Court of Federal Claims’ dismissal of their challenge to the 2015 FAST Act. The brief argues that the FAST Act breached the covered banks’ Federal Reserve Bank stock subscription agreements by slashing the guaranteed six-percent dividend rate. Alternatively, the brief argues that the FAST Act breached the implied covenant of good faith and fair dealing in those agreements, or that the FAST Act amounted to an unconstitutional taking of the banks’ property without just compensation. The brief also argues that the Court of Federal Claims wrongly dismissed ABA on standing grounds.

BANKRUPTCY: Merit Management Group, LP v. FTI Consulting, Inc. — In a unanimous decision written by Justice Sotomayor, the Supreme Court rules that the safe-harbor provision in Section 546(e) of the Bankruptcy Code does not apply to transactions in which a financial institution merely acts as an intermediary, rather than being the buyer or seller. According to the Court, to determine whether a transaction falls within the safe harbor, courts must look at the ultimate transaction the bankruptcy trustee is seeking to undo. The Court rejects Merit Management Group’s argument that its stock transaction fell within the safe harbor, because it contained several intermediate transactions, each of which directly involved a financial institution. In the Court’s view, the plan language of Section 546(e) makes clear that courts should look only at the transfer the trustee seeks to avoid to determine whether the safe harbor applies. The Court notes that the safe harbor saves from avoidance certain securities transactions “made by or to (or for the benefit of) covered entities,” whereas transfers “through” a covered entity appear nowhere in the statute.

DODD-FRANK ACT: Digital Realty Trust, Inc. v. Somers — In a unanimous decision written by Justice Ginsberg, the Supreme Court rules the definition of “whistleblower” in the anti-retaliation provision of the Dodd-Frank Act does not extend to an individual who has not reported a violation of the securities laws to the Securities and Exchange Commission (SEC). The Court finds the statutory definition of a whistleblower— an “individual providing information relating to a violation of the securities laws to the Commission”— unequivocally affirms that SEC reporting is a prerequisite to Dodd-Frank protection. The Court follows the statute’s explicit definition, meaning an individual who has not reported a violation of the securities laws to SEC does not qualify for whistleblower protection under Dodd-Frank.

U.S. BANK SETTLEMENT: United States v. U.S. Bank NA — The U.S. Department of Justice (DOJ), the Financial Crimes Enforcement Network (FinCEN), the Office of the Comptroller of the Currency (OCC), and the Federal Reserve announces $613 million in penalties against U.S. Bancorp and its subsidiary, U.S. Bank N.A. (U.S. Bank) for willful anti-money laundering and Bank Secrecy Act (aml/bsa) violations. As part of the settlement, U.S. Bank enters into a two-year Deferred Prosecution Agreement (DPA) with DOJ. U.S. Bank admits that it (1) failed to devote sufficient resources to its aml/bsa compliance program;
(2) artificially capped the number of alerts generated by its transaction monitoring system based on staffing levels and resources; (3) failed to conduct any transaction monitoring of non-customer Western Union transactions at its branches; (4) failed to file suspicious activity reports (SARs) as a result of deficient customer due diligence, transaction monitoring and investigation procedures; and (5) failed to timely report suspicious banking activities of a significant customer who used the bank to launder more than $2 billion of proceeds from an illegal payday lending scheme.

**FAIR HOUSING ACT (FHA):** *City of Philadelphia v. Wells Fargo & Co.* — A Pennsylvania federal district court denies Wells Fargo’s motion to dismiss the City of Philadelphia’s (the City) claims that the bank engaged in alleged discriminatory lending practices in violation of the Fair Housing Act. The court finds that the City sufficiently pled allegations to allow claims that a bank engaged in discriminatory lending practices in minority communities within the city to proceed.

**COLLATERALIZED LOAN OBLIGATION (CLO) TRANSACTIONS:** *Loan Syndications & Trading Association v. Securities & Exchange Commission (SEC)* — The D.C. Circuit reverses a district court ruling that held CLO managers are “securitizers” and therefore fall under Dodd-Frank’s risk retention rules. The D.C. Circuit finds that CLO managers “do not hold the securitized loans at any point,” meaning the CLO managers cannot retain a portion of something they never held.

**FAIR DEBT COLLECTION PRACTICES ACT (FDCPA):** *Tatis v. Allied Interstate, LLC* — The Third Circuit revives a putative class action alleging debt collector Allied Interstate LLC violated the FDCPA by cajoling borrowers to pay time-barred debts by presenting “settlement” offers. According to the Third Circuit, the word “settle” could be construed as an offer to settle an account and, alternatively, could be construed as an offer to settle a legal matter. Meaning, when language in a collection letter can be read two ways, and one way is inaccurate, the letter is misleading under the FDCPA.

**American Bankers Association (ABA) v. United States**

**ABA FILES OPENING APPEAL BRIEF IN FAST ACT LITIGATION**

**Date:** February 26, 2018

**Issue:** Whether Fixing America’s Surface Transportation Act’s (FAST Act) reduction of the dividend payment rate for banks with over $10 billion in assets from six percent to a floating rate of two percent in 2016 constituted a breach of contract, breach of the implied covenant of good faith and fair dealing, and a taking of private property without just compensation in violation of the Fifth Amendment.

**Case Summary:** ABA and Washington Federal filed their opening brief in their joint appeal to the United States Court of Appeals for the Federal Circuit seeking reversal of the Court of Federal Claims’ dismissal of their challenge to the 2015 FAST Act.

ABA and Washington Federal have claimed that the FAST Act breached the covered banks’ Federal Reserve Bank stock subscription agreements by slashing the guaranteed six-percent dividend rate. Alternatively, ABA and Washington Federal argued that the FAST Act breached the implied covenant of good faith and fair dealing in those agreements, or that the FAST Act amounted to an unconstitutional taking of the banks’ property without just compensation.

Chief Judge Susan Braden of the United States Court of Federal Claims dismissed the claims, finding that a clause in the Federal Reserve Act that allows Congress to “amend, alter, or repeal” the Act precluded recovery.

ABA and Washington Federal’s brief argued that Chief Judge Braden’s opinion overlooked more than a century of precedent prohibiting the government from using its power to amend a statute to interfere with
vested contractual rights, such as the banks’ right to a six-percent dividend on stock purchased prior to the FAST Act.

First, the brief argued that Washington Federal pled a valid stock subscription agreement with the Government. Washington Federal’s subscription constituted an acceptance of the stock offering in the Federal Reserve Act, or the subscription constitutes an offer that the San Francisco Reserve Bank accepted by processing Washington Federal’s application and payment and issuing an Advice of Holdings.

Second, the brief argued that Washington Federal stated valid claims for breach of contract or, alternatively, breach of the implied duty of good faith and fair dealing. The brief explained that since 2016, the Government has not paid Washington Federal the guaranteed six-percent dividend; and as a result, Washington Federal will lose approximately $1 million every year. Moreover, the brief explained that the government unfairly targeted a small group of banks and forced them to fund projects totally unrelated to the services they provide.

Furthermore, the brief asserted that the Court of Federal Claims wrongly dismissed ABA and Washington Federal’s complaint because of the Federal Reserve Act’s reservation of power clause. The brief explained that Supreme Court precedent makes clear that a reservation power clause does not carry dispositive weight in a contract case. Meaning, the reservation of power clause alone cannot insulate the Government from Washington Federal’s breach of contract claim. The brief asserted that Washington Federal has a vested contractual right in the Federal Reserve Bank stock it purchased prior to the FAST Act, and that stock guarantees a six-percent dividend.

Third, the brief argued that Washington Federal stated a valid takings claim. By relying solely on the reservation of power clause, the brief asserted that the Court of Federal Claims failed to address the scope of Washington Federal’s contract rights and prematurely dismissed this alternative takings theory as well.

Finally, the brief argued that the Court of Federal Claims wrongly dismissed ABA on standing grounds. The brief explained that ABA satisfied the first two prongs of associational standing—its members would otherwise have standing to sue in their own right, and the ABA seeks to protect interests germane to its purpose. Contrary to the Court of Federal Claims’ holding, the brief argued that ABA satisfied the third prong of associational standing, because “individualized proof” is not necessary to establish the claims of the ABA’s affected member banks. The brief explained that several Courts, including the Supreme Court, have found associational standing in damages cases where, like here, the damages equation is the same for each member.

**Bottom Line:** The Government’s response brief is due on April 9, 2018. The ABA and Washington Federal will then have two weeks to file a reply.

**Documents:**
Brief

---

*Merit Management Group, LP v. FTI Consulting, Inc.*
**SUPREME COURT LIMITS SCOPE OF BANKRUPTCY CODE SAFE HARBOR**
**Date:** February 27, 2018

**Issue:** Whether Section 546(e) protects securities transactions from trustees’ clawback efforts only when a financial institution is the buyer or seller, or whether the provision also applies to funds that pass through a bank without befitting the financial institution.

**Case Summary:** The U.S. Supreme Court ruled that the safe-harbor provision in Section 546(e) of the
Bankruptcy Code does not apply to transactions in which a financial institution merely acts as an intermediary, rather than being the buyer or seller.

In 2007, Valley View Downs, LP (Debtors), owner of a Pennsylvania racetrack, acquired another racetrack, Bedford Downs, in an effort to eliminate its competition to acquire Pennsylvania's last harness-racing license, and to establish a combination racetrack and gambling operation. Valley View purchased 100% of Bedford Downs' shares in exchange for $55 million. To finance the transaction, Valley View utilized Credit Suisse as a lender and Citizens Bank of Pennsylvania as escrow agent. After the sale, Valley View failed to secure a gambling license, leading them to file a Chapter 11 petition on March 6, 2010.

Under the confirmed plan of reorganization, FTI Consulting, Inc. was selected as litigation trustee. In an adversary proceeding in Illinois federal district court, the litigation trustee sought to avoid the transfer made to Merit Management Group, LP (Merit) as a fraudulent transfer.

The Bankruptcy Code allows trustees to set aside and recover certain transfers for the benefit of the bankruptcy estate, including certain fraudulent transfers “of an interest of the debtor in property.” The Bankruptcy Code also sets out a number of limits on the exercise of these avoiding powers, including the Section 546(e) safe harbor. Section 546(e) provides that a “trustee may not avoid a transfer that is a settlement payment made by or to (or for the benefit of) a financial institution or that is a transfer made by or to (or for the benefit of) a financial institution in connection with a securities contract.”

Merit argued that the transaction fell under the Section 546(e) safe harbor and should not be avoided, given that the transfers were made “by or to” a financial institution when they were financed by Credit Suisse and held in escrow by Citizen's Bank of Pennsylvania. In reversing the district court, the Seventh Circuit held that Section 546(e)’s safe harbor provision does not protect transfers that involve financial institutions that act merely as a conduit.

In a unanimous decision written by Justice Sotomayor, the Supreme Court affirmed, ruling the language and context of Section 546(e), and the broader statutory structure, demonstrates that the relevant transfer for purposes of the safe-harbor inquiry is the transfer the trustee seeks to avoid.

According to the Court, to determine whether a transaction falls within the safe harbor, courts must look at the ultimate transaction the bankruptcy trustee is seeking to undo. The Court rejected Merit’s argument that its stock transaction with a competitor in the harness racing business fell within the safe harbor because it was made up of several intermediate transactions, each of which directly involved a financial institution. In the Court’s view, the plan language of Section 546(e) makes clear that courts should look only at the transfer the trustee seeks to avoid to determine whether the safe harbor applies. The Court noted that the safe harbor saves from avoidance certain securities transactions “made by or to (or for the benefit of) covered entities,” whereas transfers “through” a covered entity appear nowhere in the statute.

In this case, FTI sought to avoid the Valley-View-to-Merit transfer. The Court explained that when determining whether Section 546(e) saves that transfer from avoidance liability, the inquiry is whether the overarching transfer meets the safe-harbor criteria. Because the parties did not contend that either Valley View or Merit is a covered entity, the Court concluded that the transfer falls outside of the Section 546(e) safe harbor.

**Bottom Line:** The Supreme Court’s decision settles a circuit split and nullifies the safe harbor rule interpretations of the Second, Third, Sixth, Eighth and Tenth Circuits.

**Documents:**
[Opinion](#)
Digital Realty Trust, Inc. v. Somers

SUPREME COURT CURTAILS DODD FRANK WHISTLEBLOWER PROTECTION

Date: February 21, 2018

Issue: Whether the anti-retaliation provision of the Dodd-Frank Act extends to an individual who has not reported a violation of the securities laws to the Securities and Exchange Commission (SEC).

Case Summary: The U.S. Supreme Court unanimously ruled the definition of “whistleblower” in the anti-retaliation provision of the Dodd-Frank Act does not extend to an individual who has not reported a violation of the securities laws to SEC.

Plaintiff Paul Somers, a Vice President at Digital Realty Trust, Inc., disclosed to the company’s senior managers of possible securities law violations. Before disclosing his concerns to the SEC, Digital Realty terminated his employment. In response, Somers sued Digital Realty, claiming that he was terminated in retaliation for the disclosures he made to the company concerning its allegedly unlawful activity. In a motion to dismiss, Digital Realty argued that Dodd-Frank did not protect Somers because he only made internal disclosures and did not report to the SEC.

In affirming the district court, the Ninth Circuit held that Dodd-Frank protects internal whistleblowers as well as those who report to the SEC. The Ninth Circuit found that Dodd-Frank prohibits retaliation against public company employees who report violations to a supervisor by incorporating the Sarbanes-Oxley Act’s (SOX) disclosure requirements through Section 21F of the Securities Exchange Act.

Somers argued that the statute is ambiguous and thus warrants Chevron deference to the SEC’s rule, which does not require reporting to the agency. Somers also argued that if SEC reporting was required, retaliation for internal reporting would go unpunished based on the happenstance of a separate report to the SEC. Finally, Somers argued that professionals may face retaliation before they have a chance to report to the SEC.

In a unanimous decision written by Justice Ginsberg, the Supreme Court ruled that only whistleblowers who report to the SEC are protected against employment retaliation under Dodd-Frank. The Court found that the statute’s definition of whistleblower— an individual providing information relating to a violation of the securities laws to the Commission— unequivocally affirms that SEC reporting is a prerequisite to Dodd-Frank protection. Meaning, the Court based its decision on the principle that the Court must follow the statute’s explicit definition.

The Court noted that its decision shields employees, such as auditors and attorneys, who are required to report internally before they may do so externally. Meaning, Dodd-Frank is triggered as soon as they make an external report. Although Somers argued that these professionals may face retaliation before they have a chance to report to the SEC, according to the Court, Somers made no showing that Congress had this concern in mind. Moreover, the Court noted that given Dodd-Frank’s aim of encouraging SEC reporting, it is understandable that the whistleblower regime is restricted to SEC reporters.

Bottom Line: The Court’s decision settles a circuit split between the Fifth Circuit (holding Dodd-Frank protects whistleblowers who only reported violations internally) and the Ninth and Second Circuits (holding Dodd-Frank protections extend to those who report internally or to the SEC).

Documents:

United States v. U.S. Bank NA

U.S. BANK PAYS $613M TO REGULATORS FOR AML/BSA VIOLATIONS
Date: February 12, 2018

Issue: The U.S. Bank Deferred Prosecution Agreement (DPA) with DOJ for willful anti-money laundering and Bank Secrecy Act (aml/bsa) violations.

Case Summary: The U.S. Department of Justice (DOJ), the Financial Crimes Enforcement Network (FinCEN), the Office of the Comptroller of the Currency (OCC), and the Federal Reserve announced $613 million in penalties against U.S. Bancorp and its subsidiary, U.S. Bank N.A. (U.S. Bank) for willful aml/bsa violations. U.S. Bank also entered into a Deferred Prosecution Agreement (DPA) with DOJ.

First, U.S. Bank willfully failed to establish, implement and maintain an adequate aml/bsa compliance program from at least 2009 through 2014. According to the DPA, in late 2012, the Bank had 32 investigators to monitor over $340 billion in assets. UBS admitted that it filled key compliance roles with individuals who lacked experience.

Second, U.S. Bank artificially capped the number of alerts generated by its transaction monitoring system based on staffing levels and resources, and made efforts to avoid disclosing this practice to the OCC. According to the DPA, since April 2004, U.S. Bank configured its AML transaction monitoring system to generate a fixed number of “security blanket” alerts per month, rather than setting a risk-based threshold that would have generated alerts naturally occurring for set levels of risk.

Third, U.S. Bank failed to conduct any transaction monitoring of non-customer Western Union transactions at its branches. According to the DPA, in May 2009, U.S. Bank began offering both customers and non-customers the ability to conduct Western Union transactions at its branches. U.S. Bank recognized that this service was one of the highest risk products the bank offered. However, the bank did not perform an initial risk assessment of Western Union, and failed to conduct transaction monitoring of any non-customer Western Union transactions.

Fourth, U.S. Bank failed to file SARs as a result of deficient customer due diligence, transaction monitoring and investigation procedures. According to the DPA, in October 2015, U.S. Bank entered into a consent order with OCC related to the Western Union transactions. Under the terms of the consent order, U.S. Bank performed a look-back analysis, which resulted in the generation of an additional 24,179 alerts and the filing of 2,121 SARs involving over $719 million in transactions. The OCC noted multiple deficiencies with the bank’s transaction monitoring systems, which resulted in monitoring gaps and the failure to report a significant amount of suspicious activity.

Finally, U.S. Bank failed to timely report suspicious banking activities of Scott Tucker, a significant customer, who used the bank to launder more than $2 billion of proceeds from an illegal payday lending scheme. On October 13, 2017, Scott Tucker and his attorney, Timothy Muir, were convicted in New York federal district court for racketeering, wire fraud, and money laundering for their roles in perpetrating a massive payday lending scheme. According to the DPA, U.S. Bank willfully failed to timely report suspicious banking activities of Tucker, even though U.S. Bank was put on notice about possible aml/bsa violations.

Under the terms of the DPA and joint settlements, U.S. Bank agreed to pay $453 million to DOJ, $15 million to the Federal Reserve Board, $70 million to FinCEN, and $75 million to OCC. U.S. Bank must also strengthen oversight of firmwide risk-management and compliance programs for preventing aml/bsa violations, and establish procedures to ensure it provides adequate and complete responses to examiner inquiries.

Bottom Line: This resolution marks the second major am/bsa resolution in February. On February 7, 2018, Rabobank N.A. entered a guilty plea and received a $369 million penalty.

Documents:  
Deferred Prosecution Agreement
**City of Philadelphia v. Wells Fargo & Co.**

**PHILADELPHIA'S FHA CLAIMS SURVIVE MOTION TO DISMISS**

**Date:** January 16, 2018

**Issue:** Whether the City of Philadelphia plausibly alleged that Wells Fargo engaged in discriminatory lending practices in violation of the Fair Housing Act (FHA).

**Case Summary:** A Pennsylvania federal district court denied Wells Fargo’s motion to dismiss the City of Philadelphia’s (the City) claims that the bank engaged in alleged discriminatory lending practices in violation of the FHA.

In May 2017, the city filed a complaint against Wells Fargo, alleging discrimination under both disparate-treatment and disparate-impact theories. The City asserted that the bank offered better terms to similarly situated, non-minority borrowers or refused to make loans in minority neighborhoods. As a result, the City asserted that Wells Fargo’s policy caused foreclosures and vacant homes, which in turn reduced property tax revenue and increased cost of providing municipal services.

Wells Fargo argued that (1) the City's claim is time barred; (2) the City improperly alleged the disparate-impact theory; and (3) the City failed to allege proximate cause under the U.S. Supreme Court’s decision in *Bank of America Corp. v. City of Miami*.

The district court ruled that the City plausibly alleged disparate impact and proximate cause under the FHA. In support of its decision, the court reasoned that the City identified at least seven specific policies—derived from Confidential Witness statements—that led to disparate impacts in Wells Fargo’s mortgage lending. According to the court, the City used statistical analysis to allege that, under these policies, African-American and Latino borrowers with FICO credit scores above 660 were more than twice as likely to be issued a high-cost or high-risk loan when compared to a similarly situated white borrower.

Moreover, the court found that the City’s alleged noneconomic injuries stemming from Wells Fargo’s alleged lending practices was plausible. The court noted there was a direct connection between discriminatory lending and alleged harms suffered by the City in relation to fair housing and integrated community. The court decided that Wells Fargo did not meet its burden in showing that the City’s FHA claim should be dismissed.

On February 15, 2018, Wells Fargo asked U.S. District Judge Anita Brody to certify her ruling for immediate appeal to the Third Circuit. Wells Fargo argued that the City did not adequately prove a direct link between the bank’s lending practices and the harms the city is claiming stemmed from them. Wells Fargo also argued that the City failed to show that any discriminatory loans were issued within the two-year statute of limitations under the FHA.

**Bottom Line:** The parties will start pre-trial fact discovery. Because the City adequately alleged an FHA claim based on disparate impact, the court held that the City must be given a chance to show whether Wells Fargo had a policy of racial disparity.

**Documents:**

Opinion

---

**Loan Syndications & Trading Association v. Securities & Exchange Commission (SEC)**

**D.C. CIRCUIT RULES CLO MANAGERS NOT REGULATED BY SECTION 941 OF DODD FRANK**

**Date:** February 9, 2018
Issue: Whether collateralized loan obligation (CLO) managers are subject to Dodd-Frank’s risk retention rules.

Case Summary: The D.C. Circuit reversed a district court’s ruling that held CLO managers are “securitizers” under Dodd-Frank’s risk retention rules.

Section 941(b) of the Dodd-Frank Act requires “securitizers” to retain 5 percent of the credit risk associated with an asset-based securities transaction, which term includes a CLO. The reasoning behind Section 941(b) is that when securitizers retain a material amount of risk, they have “skin in the game,” which aligns their interests with investors in asset-backed securities. The SEC, along five other federal banking agencies, however, adopted final credit risk retention rules that did not exempt open market CLOs. Those CLOs securitize assets bought on the secondary market.

The Loan Syndications and Trading Association (LSTA) sued the SEC and Federal Reserve in 2014, arguing the risk-retention rules were “arbitrary, capricious” and “an abuse of discretion.” However, the D.C. district court held that the regulators’ implementation of the final rules met the requirements of the Administrative Procedure Act and were entitled to Chevron deference.

On appeal, LSTA argued that given the nature of the transactions performed by CLO managers, the language of the statute invoked by the agencies did not encompass their activities. LSTA asserted that CLO managers are far removed from the process of transferring the loans underlying the securitizations to merit the risk retention rule.

The D.C. Circuit agreed with LSTA and reversed, ruling that CLO managers do not retain credit risk and thereby are not securitizers under Section 941. The court reasoned that CLO managers “do not hold the securitized loans at any point,” meaning the CLO managers cannot retain a portion of something they never held. In the court’s view, a CLO manager meets with potential investors and agrees to the terms of its performance and the risk profiles the CLO will ultimately take. In contrast to a financial institution, the CLO managers do not originate or acquire assets and then securitize the loans.

Bottom Line: As of March 1, 2018, the Government has not indicated whether it will appeal the decision.

Documents:
Opinion

---

Tatis v. Allied Interstate, LLC
THIRD CIRCUIT RULES OFFER TO “SETTLE” STALE DEBT WAS MISLEADING
Date: February 12, 2018

Issue: Whether debt collection letters containing “settlement offers” for time-barred debt is permitted under the Fair Debt Collection Practices Act (FDCPA).

Case Summary: The Third Circuit revived a putative class action alleging debt collector Allied Interstate LLC violated the FDCPA by coaxing borrowers to pay time-barred debts by issuing “settlement” offers.

Plaintiff Michelle Tatis sued Allied after receiving a letter in 2015 offering to settle about $1,290 in debt she incurred at Bally Total Fitness for a payment of $129. Plaintiff asserted the letter was misleading under the FDCPA because the letter led her to believe she had a legal obligation to pay the debt.

In response, Allied asserted that its collection letter was not improper, given that it did not threaten a lawsuit, or mention the words “lawsuit” or “litigation.” Allied argued that debt collectors may seek voluntary debt payment, even after the statute of limitations has run. Allied also asserted that the FDCPA does not require debt collectors to tell consumers the legal status of the debt.
In reversing the district court, the Third Circuit ruled that letters with “settlement offers” for old debt could be construed as a misleading debt-collection attempt and thus violates the FDCPA. In the Third Circuit’s view, the word “settle” could be construed as an offer to settle an account and, alternatively, could be construed as an offer to settle a legal matter. Meaning, when language in a collection letter can be read two ways and one way is inaccurate, the letter is misleading under the FDCPA. Even without a threat of litigation, the Third Circuit noted that a settlement offer can be misleading and imply that stale debt is legally enforceable.

**Bottom Line:** As of March 1, 2018, Allied has not indicated whether it will appeal the Third Circuit’s decision.

**Documents:**

[Opinion]