

Corporate Transactions and Finance; Commercial Litigation and Nationwide Programs

d'Arcambal Ousley & Cuyler Burk LLP (the "Firm") is a certified women-owned law firm led by teams of experienced attorneys in New York and New Jersey. Our clients include government agencies, international and domestic financial institutions, and other leading businesses across many industry sectors. The Firm was founded in 1997 with a book of business from United Health Care and MetLife. The Firm is one of the original members of the National Association of Minority and Women Owned Law Firms ("NAMWOLF"), and Michelle d'Arcambal was a co-founder of NAMWOLF's Insurance PAC in 2006, then called the "Insurance Industry Initiative."

I. Practice areas

A. Corporate Finance Practice

The Firm has top-level expertise in corporate finance, with a particular emphasis in asset purchases and sales, structured finance and securitizations.

The Corporate Finance Practice is led by Michael Braun, with a team of senior-level associates with multi-dimensional legal backgrounds including securities, complex life and annuity litigation, ERISA and bankruptcy.

Mr. Braun was a partner in the securitization departments at Morgan, Lewis & Bockius LLP, McKee Nelson LLP, and Brown and Wood LLP (now known as Sidley Austin LLP). While an associate at Skadden, Arps, Slate, Meagher & Flom LLP, he was instrumental in the development of Skadden's structured finance practice in California. He also developed McKee Nelson's structured finance practice in 2002 with others from Sidley.

Mr. Braun's 30-year practice involved representing major investment and commercial banks, issuers, loan originators and investors in complex structured finance and other finance transactions. He has served as trust and dealer counsel on single-family and multi-family government-sponsored enterprise ("GSE") mortgage transactions for GNMA, FNMA, and FHLMC. He has extensive experience structuring transactions as well as drafting, reviewing and negotiating disclosure and transaction documents and legal opinions relating to mortgage and asset-backed securitizations. Mr. Braun's experience also includes repurchase financing and whole loan and other asset purchases.



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Mr. Braun's mortgage securitization experience includes REMIC and non-REMIC securitizations of performing and non-performing residential mortgage loans, as well as closed-end and revolving home equity loans, second lien mortgage loans, reverse mortgages, manufactured housing contracts, small commercial mortgage loans, mixed-use mortgage loans and resecuritizations of private label and GSE collateral.

Another of the firm's attorney commenced his legal career as an associate at Skadden where his practice included securitizations of credit card, auto loans and other receivable securitizations. He was involved in all aspects of the transactions, from due diligence to closings. He has experience drafting, reviewing and negotiating underwriting agreements as well as primary securitization documents. In connection with these transactions, he managed several securitization closings and is experienced with closing mechanics and necessary ancillary documentation for closings.

The Firm has represented other financial clients in commercial and residential foreclosures and a variety of transactions under the Uniform Commercial Code. Our attorneys have successfully represented a number of financial institutions that, as investors in pools of mortgage loans, had disputes relating to the origination and servicing of the underlying assets.

B. Financial Services, Real Estate and Related Transactions

The Firm represents clients ranging from sole proprietorships to Fortune 500 companies with strategic planning as well as negotiating and drafting formation and governance documents for various types of business entities. The Firm has represented clients in transactions involving purchase and sale agreements (both asset and stock), stock option and incentive agreements, employment and consultant agreements, shareholders' agreements, environmental liability assumption agreements and remediation contracts. The Firm also provides substantive contract review and negotiation for both small and large companies. Finally, the Firm advises financial institutions regarding federal and state compliance and regulatory issues.

C. Bankruptcy

Firm attorneys have represented lenders, creditors and government agencies in active bankruptcy cases. The Firm is experienced in examining consumer bankruptcy cases, assessing and preparing strategies to protect client interests, bankruptcy motion practice, objections to debtor proposed plans and examinations of debtor documents including petitions to assert claims on behalf of clients. Finally, the Firm has successfully negotiated with debtors' counsel to assert claims and address issues related to inadvertent and advertent omissions from bankruptcy schedules to protect debts from discharge.

Firm attorneys have also represented creditors within large corporate restructuring cases by reviewing proposed reorganizational plans and competing plans and protecting interests.

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In addition to creditor representations, the Firm's attorneys have experience representing retail debtors and corporate debtors during all aspects of the reorganizational process from the first day through the confirmation of plans.

D. Transactional Insurance Advice

The Firm provides transactional advice on state insurance and annuities regulations in connection with the development of new products and the operation of existing products.

The Firm also advises clients on litigation readiness and has been instrumental in fostering program-wide proactive approaches to discovery to increase success and cost-effectiveness.

E. ERISA

Since 1987, the Firm has handled sophisticated, complex ERISA litigation and plan review representing administrators, insurers and self-insured plans throughout New York, New Jersey and Pennsylvania.

F. Securities and Complex Commercial Matters

FINRA: In connection with litigations involving variable annuities and life insurance, the Firm has handled FINRA arbitrations and responses to FINRA requests to investors and corporations regarding allegations of misrepresentations made in the sale of life insurance, suitability, pricing, representation issues, and allegations of "selling away."

NCUA: The Firm also represents the National Credit Union Administration in preparing, litigating and resolving fidelity bond claims. In connection with one such representation, the Firm successfully resolved a complicated pre-litigation matter involving multiple credit union claims against the fidelity bond company with respect to alleged fraud committed by the owner and president of the credit unions.

Sales Practices Litigation: The Firm has handled several sales practices matters and successfully moved to dismiss a matter against a financial institution brought by an investor alleging fraudulent sales practices. The Firm's unique understanding of sales practices matters was developed during the representation of MetLife by Michelle d'Arcambal and James Lenaghan while in-house attorneys in the vanishing premium sales practices class actions both in nationwide MDL and in several states.

Commercial Litigation of Mortgage-Related Contracts: The Firm represents Red Ventures, an American media company that owns and operates brands such as Bankrate, Sage Mortgage, Lonely Planet, CNET, ZDNet and The Points Guy. Recent litigation representations include an international arbitration and an appeal relating to high-dollar claims made with respect to mortgage companies.



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Stranger-Owned Life Insurance Policies: The Firm has successfully defended life insurers in claims brought by speculators in life insurance policies (commonly known as stranger-owned life insurance or "STOLI" policies). These matters require analyses of our clients' policies and guidelines regarding lapses, notices and reinstatements. Litigants typically present complicated technical arguments to avoid the company's determination that these policies have lapsed for various reasons. Over time and with the exception of a few states, the law has changed in favor of insurers, allowing them to rescind fraudulently obtained policies by speculators after the expiration of the two-year contestability clause.

Securities: Several of the Firm's attorneys have significant securities backgrounds. One of the Firm's senior associates, Mindy Dolgoff, has both plaintiff-side and defense experience with securities fraud class actions. At Dewey Ballantine LLP, she defended corporations in both securities fraud class action litigations and shareholder derivative suits. At Labaton Sucharow, LLP, she represented institutional investors in all aspects of complex securities fraud class actions, including investigation of claims, drafting of complaints, dispositive motion practice, motions for class certification, management of large-scale document review, written discovery, depositions, trial preparation and trial.

G. Mortgage and Rescission Litigation

The Firm has spent decades representing insurers and financial institutions seeking to affirmatively rescind coverage or recover improperly or fraudulently paid monies under policies of insurance or other financial instruments. Actions include litigations seeking to rescind life or disability policies or seeking to recover damages in mortgage, health insurance and other matters based on fraud or misrepresentation. The Firm has also litigated matters where defendants allege that a mortgage was invalid due to improper securitization or assignment, or faulty lapses or defaults due to failure to follow recording and notice requirements.

In January 2012, the Firm was retained as part of MetLife's Home Loans Recovery Program to recover monies in connection with mortgages it had issued. In those matters, we affirmatively sued brokers, surveyors, appraisers, title insurers, and other entities on claims of fraud. Also on behalf of MetLife, the Firm defended the appeal of a successful motion to dismiss based on claims that a reverse mortgage was issued improperly, and a New Jersey appeal of a successful trial verdict also concerning a reverse mortgage.

II. Programs

A. Recapture Services for the New York State Housing Trust Fund Corporation

Since December 2016, the Firm has acted as outside counsel assisting the State of New York's Housing Trust Fund Corporation ("HTFC") through the Office of Resilient Homes and

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Communities (“RHC”), formerly the Governor’s Office of Storm Recovery. The goal of the program is to recapture HUD funding incorrectly paid out by RHC to ineligible applicants pursuant to grant agreements that set forth the requirements for use of the HUD funds. Ineligible applicants include New York small businesses and single-family homeowners who experienced damage from Hurricane Irene, Tropical Storm Lee, and Hurricane Sandy.

Originally, the Firm partnered with Venable LLP as a diverse subcontractor to provide specific legal services pursuant to an existing contract between Venable and RHC. Under this sub-contract, the Firm was engaged to work with RHC to develop a litigation program and processes that would enable RHC to use the judicial system to seek repayment from a substantial number of overpaid individuals and small businesses, and to provide guidance to in-house counsel.

The engagement became significant and successful enough to warrant a Request for Proposal for continued work on the recapture litigation. The Firm responded to this RFP and was awarded a direct contract with RHC in 2018, which has been extended via amendment three times. The Firm recently was awarded a contract to provide legal services to the New York State Housing Finance Agency, State of New York Mortgage Agency, State of New York Municipal Bond Bank Agency, Tobacco Settlement Financing, Housing Trust Fund Corporation and New York State Affordable Housing Corporation. The Firm has handled over 500 cases for RHC; it has successfully resolved nearly 450 cases and won several summary judgment motions.

B. National Counsel for the Office of Federal Employee Life Insurance Administration (“FEGLI”) Overpayment Recovery Program

The Firm has acted as National Counsel for FEGLI’s Overpayment Recovery Program for over 18 years. As coordinating counsel, the Firm is responsible for supervising and handling the nationwide recovery of institutional overpayment matters for FEGLI and the administrator of the FEGLI Program, MetLife.

Over the past 18 years, the Firm has handled between 50 to 100 matters per year, negotiating settlements and engaging in litigations to obtain judgments against those persons receiving overpaid or mistakenly paid benefits.

The Firm litigates and handles all matters venued in New York, New Jersey, Texas and Pennsylvania, and engages minority and women-owned law firms to act as local counsel in those jurisdictions where the Firm does not have an office.

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C. National Counsel for Several Life Insurers' Interpleader Programs

The Firm represents life insurers nationwide with respect to interpleaders of death benefits using a local counsel network of minority and women-owned law firms. The interpleaders can and do become complex, leading to trials and appeals when there are allegations that the company contributed to the interpleader or allegations of failure to follow corporate guidelines.

D. Discovery & Document Review Services

The Firm specializes in all types of discovery services and assists clients with navigating the discovery process cost-effectively and efficiently. We assist with litigation readiness, developing template discovery responses and creating repositories for responsive documents to ensure conformity and promote efficiency for litigation involving repetitive claims. We provide initial reviews of key policies, financial documents, claims and product files to identify the areas of risk or concern affecting companies in litigation or pre-litigation matters. We are familiar with Relativity, Axcelerate and Concordance e-discovery platforms.

The Firm also represents companies responding to third-party subpoenas and document requests served in conjunction with complex commercial litigations, including class action cases. That work has included the preparation of privilege logs and negotiating with class counsel. The Firm has been instrumental in identifying and defending privilege determinations, including whether an in-house attorney was acting as an attorney or a business officer, and whether a third-party vendor's analysis is protected under the work product doctrine.

About d’Arcambal, Ousley & Cuyler Burk LLP

For over twenty years, d’Arcambal Ousley & Cuyler Burk, LLP (DO&CB) has provided exceptional legal counsel to Fortune 500 companies and large financial institutions. For each client engagement, DO&CB emphasizes cost-effective approaches, early case assessments, and strategic planning and expertise. Our lawyers previously practiced in corporate legal departments and large law firms, so we understand the voice of the customer and its business and legal objectives. DO&CB is women-owned with offices in New York City, New Jersey and Philadelphia.

Featured Partners, and Senior Counsel Handling Corporate Transactions and Finance; Commercial Litigation and Nationwide Programs

Michelle J. d’Arcambal

Ms. d’Arcambal co-founded the firm in 1997 with a book of business from United Health Care and MetLife. Those companies helped grow the Firm. Ms. d’Arcambal has more than 25 years of experience defending companies in all aspects of commercial litigation, including class actions, mediations, arbitrations, appeals and trials.

Ms. d’Arcambal developed a unique understanding of corporations and their businesses while working in the Legal Department of MetLife. There, she defended the company in nationwide class actions relating to allegations concerning the sale of individual life insurance products in connection with the “vanishing premium” litigations. She also developed expertise in ERISA and life, annuity and disability products.

Ms. d’Arcambal was previously a partner in the New York City office of Ross & Hardies, now known as McGuire Woods LLP, where she concentrated on banking and real estate litigation. Ms. d’Arcambal began her legal career in the litigation department of Brown & Wood LLP, now known as Sidley Austin LLP, where she concentrated on securities, surety and real estate litigation.

Education

- JD, University of Wisconsin Law School, 1985
- B.A., Economics and English, Smith College

Jaclyn D. Malyk

Ms. Malyk focuses her practice on insurance law with an ERISA focus, including life, health and disability, and other insurance coverage litigation, insurance products regulation and general contract litigation.

Ms. Malyk gained invaluable experience during her tenure in the in-house ERISA and Group Litigation law department of a Fortune 100 life insurance company. Ms. Malyk continues to give transactional advice on state insurance and annuities regulations in connection with the development of new products and the operation of existing products. Ms. Malyk further advises on litigation readiness and has been instrumental in fostering program-wide proactive approaches to ERISA discovery to increase success and cost-effectiveness.

Education

- JD, Seton Hall University School of Law, 2002
- B.A., English and Music, Rutgers University

Kimberly A. O'Toole

Ms. O'Toole represents insurance companies in life insurance matters involving allegations of bad faith and manages nationwide programs for the Firm's clients relating to the resolution of adverse claims to life insurance proceeds through litigation and settlement. She represents New York State in its litigation recapture efforts to recover government grant money provided to small businesses and single-family homeowners who sustained damage through Hurricane Sandy.

She previously practiced law for more than six years as a litigator with Shearman & Sterling, representing financial institutions in complex civil litigations. While there, Ms. O'Toole defended corporate clients in domestic and international contract disputes, including the representation of an international bank in a multi-billion-dollar breach of fiduciary duty case arising out of the management of an insurance trust. She also counseled banking clients on various issues, including the credit risks associated with lending to corporations with potential exposure to large class action claims. Through a pro bono program sponsored by Shearman & Sterling, Ms. O'Toole spent six months at the Office of the Corporation Counsel where she successfully tried tort cases for New York City. Ms. O'Toole was also a transactional real estate attorney in solo practice for two years.

Education

- JD, Georgetown University Law Center, cum laude, 1991
- B.S. B.A. International Management, Georgetown University, summa cum laude, 1988

Aimee L. Creed

Ms. Creed has many years of litigation experience involving commercial transactions, mortgages, banking regulations, garnishments, breach of contract claims and broker-dealer negligence. Ms. Creed also provides substantive contract review and negotiation for both small and large companies. Before joining the Firm, Ms. Creed was a litigation associate at Dechert LLP, focusing on product liability, mass torts and consumer fraud matters. She began her career as a general commercial litigation associate at Greenbaum Rowe Smith & Davis LLP in New Jersey.

Education

- JD, Columbia University School of Law, 2003
- B.A., Economics, California State University at Fullerton, cum laude

Michael P. Braun

Mr. Braun is a lawyer/MBA who previously worked in premier global law firms. His clients have included major investment and commercial banks, loan originators, hedge funds and investors. He has been named one of the world's leading practitioners in securitization by the International Financial Law Review's Guide to the World's Leading Structured Finance and Securitization Lawyers. Before joining the Firm, Mr. Braun was a partner at Morgan Lewis & Bockius LLP, Bingham McCutchen LLP, McKee Nelson LLP, and Sidley Austin LLP. His legal expertise includes general corporate matters, government regulatory and compliance issues, asset-related securitizations and financings, including SEC-registered offerings, 144A offerings and private placements, and other commercial transactions.

Mr. Braun has extensive experience representing clients on all aspects of securitized transactions, including the development of both domestic and offshore securitization structures and negotiations with liquidity and credit enhancement providers. He was lead transaction counsel for securitization programs sponsored by JP Morgan Securities Inc. and Credit Suisse Securities (USA) LLC and has represented dealers on GSE programs.

Education

- JD, Vanderbilt University School of Law, 1985
- M.B.A., Vanderbilt University, Owen Graduate School of Management
- A.B., Economics, University of Michigan

Edward V. Collins

Edward Collins represents clients in the purchase, sale, leasing, financing and development of commercial, industrial and residential properties.

Mr. Collins represents both lending institutions and borrowers in loan workout transactions and contested and uncontested foreclosure matters for residential, construction and commercial loans. He has also represented both borrowers and lending institutions relating to multi-million-dollar real estate projects involving commercial, industrial and residential properties.

Mr. Collins has represented clients ranging from sole proprietorships to Fortune 500 companies in various aspects of their legal needs and has significant experience in negotiating and drafting legal documentation including formation and governance documents for various types of business entities, purchase and sale agreements (both asset and stock), stock option and incentive agreements, employment and consultant agreements, shareholders' agreements, environmental liability assumption agreements and remediation contracts.

Education

- JD, Fordham University School of Law
- B.S., Accounting, St. Peter's College

Edgar M. Whiting

The focus of Mr. Whiting's practice is litigation, workouts and insolvency. He has broad experience in creditors' rights bankruptcy law and commercial and general litigation. He represents secured and unsecured creditors, landlords, creditors' committees and debtors in complex matters before the bankruptcy court. He has represented several leading financial institutions in loan workouts and litigation both in and out of bankruptcy court.

Mr. Whiting represents clients in commercial and residential foreclosures and a variety of matters under the Uniform Commercial Code. He has successfully represented a number of financial institutions that, as investors in pools of mortgage loans, had disputes relating to the origination and servicing of the underlying loans.

Education

- JD, Rutgers University Law School – Newark, 1987
- B.A., Economics and Foreign Affairs, University of Virginia

James M. Lenaghan

Mr. Lenaghan has nearly 40 years of experience in the areas of insurance and employee benefits. Before becoming of counsel to the Firm, Mr. Lenaghan was a litigation officer with MetLife. At MetLife, Mr. Lenaghan was part of the legal team that advanced ERISA law, representing clients in arbitrations and in state and federal courts, including the United States Supreme Court.

During his 22 years with MetLife, Mr. Lenaghan headed several litigation and insurance legal units. Mr. Lenaghan has extensive knowledge of insurance products, life and annuity contracts with and without variable features and securities components, employee benefits plan design, and associated legal and financial requirements.

Much of Mr. Lenaghan's legal work has involved handling matters that arose in difficult financial times. Mr. Lenaghan headed the MetLife litigation unit that defended over 50 putative class actions and several hundred individual opt-out cases during the height of the so-called "vanishing premium" litigation matters in the mid-to-late 1990s. More recently, Mr. Lenaghan managed and participated in the defense of numerous securities

arbitrations involving broker-dealers. Many of these NASD (now FINRA) arbitrations involved claims that recommended investments were not “suitable” during the downturn in the equity markets in the 2001–2003 time period. Some of the arbitrations involved allegations of “selling away” by registered representatives of unauthorized products such as questionable promissory notes

Education

- JD, Harvard Law School, cum laude, 1974
- B.A., History, University of North Carolina at Chapel Hill, cum laude

Mindy Dolgoff

Ms. Dolgoff is an experienced litigator and has represented clients on complex litigation matters, including securities litigation and class actions, in both state and federal court. She started her career at Dewey Ballantine LLP where she represented high-profile clients in securities, antitrust and complex commercial litigations. She also spent several years at Labaton Sucharow, LLP, one of the top securities class action law firms, where she represented institutional investors in securities fraud class action litigation. In that capacity, Ms. Dolgoff was a member of the trial team that took one of the few securities class action cases to trial and achieved a favorable verdict for its investor clients against a regional bank.

Education

- JD, New York University School of Law, 2004
- B.A., Psychology, Emory University

Tiffany C. Millioen

Ms. Millioen is a senior associate at the Firm, where she represents insurers in litigation involving life, health and disability insurance, including matters involving allegations of ERISA, bad faith, rescission and agent liability. Additionally, Ms. Millioen defends clients in commercial litigation matters involving allegations of breach of contract, fraud, misrepresentation and breach of fiduciary duty.

Before joining the firm, Ms. Millioen worked as general counsel to clients in the hospitality industry, where she focused on labor and employment matters. Ms. Millioen also worked at Paul, Weiss, Rifkind, Wharton & Garrison LLP for ten years where she represented clients in complex commercial litigation, regulatory investigations and securities litigation.

Education

- JD, Brooklyn Law School, 2006
- B.A., Political Science and English, Boston College

Vedant A. Gokhale

Mr. Gokhale has practiced for over 15 years and has experience working on high-profile litigations including mortgage-backed security and trademark infringement cases. He manages the Firm’s representation of New York State’s Housing Trust Fund Corporation in its efforts to recapture HUD funding that was incorrectly paid out to ineligible applicants for damages to their properties caused by Hurricane Irene, Tropical Storm Lee and Hurricane Sandy. To date, he has assisted in the recapture of over \$4 million through negotiated settlements and secured court judgments.

Education

- JD, New York Law School, 2002
- B.A., Public Health, Minor-Economics, Rutgers University

Sophia Hepheastou

Ms. Hepheastou is an attorney who primarily practices in the areas of bankruptcy and general litigation, providing legal advice to clients as well as general counsel services to companies regarding business disputes and debtors in Chapter 11 bankruptcy cases and consumer bankruptcy matters. She manages the Firm's FEGLI Overpayment Recovery Program. Through this program the Firm is responsible for supervising and handling the nationwide recovery of institutional overpayment matters for FEGLI and the administrator of the FEGLI Program, MetLife.

Education

- JD, Brooklyn Law School, 2016
- B.B.A., Marketing, Baruch College, City University of New York, cum laude
- University of International Business and Economics, Beijing, China