

**American College of Consumer Financial Services
Lawyers
Senator William Proxmire Lifetime Achievement Award**

Presented on April 9, 2016 to

ALAN S. KAPLINSKY

The American College of Consumer Financial Services Lawyers is pleased to present its Senator William Proxmire Lifetime Achievement Award to Alan S. Kaplinsky.

The Proxmire Award is given each year to "a person who has made significant contributions in the field of consumer financial services over that person's career." Alan is a highly deserving recipient of the Award both because of his notable achievements in the area of consumer financial services law and because of the legacy he will ultimately leave behind.

Alan graduated Boston College Law School in 1970 and then clerked on the Third Circuit for Judge John Biggs, Jr. He next joined the Philadelphia law firm of Wolf, Block, Schorr and Solis-Cohen. In 1976, he became General Counsel of Teachers Service Organization, Inc. (TSO) (which later became Advanta Corp.), an organization that made loans by mail to school teachers. Alan handled regulatory issues and managed litigation at TSO at a time when federal consumer financial services laws were in their infancy. TSO's model of soliciting loans by mail, often with the endorsement of a teachers union, was a precursor to the latter-day third-party endorsement programs popularized by the credit-card industry. While at TSO, Alan came up with the idea for TSO to acquire a "nonbank bank," demonstrating his penchant for out-of-the-box thinking and producing a huge step forward for TSO.

In 1979, Alan returned to Wolf, Block, where he founded the firm's banking and consumer financial services practice. He attracted Jeremy Rosenblum and John Culhane, along with litigator Burt Rublin, to join his "group."

At the time, the adoption of the Truth in Lending Act of 1968 (TILA), Senator Proxmire's crowning achievement in our area, was a relatively recent development and there were few lawyers who specialized in this field. Two additional developments, that would play an equal if not greater role in Alan's career, also transpired. First, in 1978, the U.S. Supreme Court held in *Marquette Nat. Bank of Minneapolis v. First of Omaha Service Corp.* that state usury laws regulating interest rates could not be enforced against nationally-chartered banks based in other states that had more liberal interest laws. And in 1980, Congress passed the Depository Institutions Deregulation and Monetary Control Act, which, among other things, allowed state-chartered banks to charge the same interest rates as their national bank counterparts. In order to take advantage of these legal developments, many banks relocated their credit card businesses to states like South Dakota and Delaware that had deregulated their usury laws. The use of credit cards subsequently increased, as did the number of fee-related lawsuits filed by consumers.

In October 1989, the Commonwealth of Massachusetts advised Greenwood Trust Company that the imposition of a \$10 late fee on its Discover card violated Massachusetts law. GTC was a federally-insured state bank chartered under Delaware law, which permitted the late charge. It took the position that it had the federal right under DIDA and *Marquette* to "export" that late charge as a form of "interest" to its customers residing in other states, including, of course, Massachusetts. The District Court rejected Discover's arguments, and found that the Massachusetts law governed.

GTC had not retained Wolf Block to represent it in the district court proceedings, but the weekend after the decision, Alan assembled the Wolf Block team, which then produced on an unsolicited basis an analysis of the decision's shortcomings. College member Hugh Hayden, then Discover's General Counsel, was suitably impressed, and retained Wolf Block to handle the appeal. Under Alan's and Hugh's guidance, the Firm secured a landmark reversal in the First Circuit.

Unfortunately, by the time the First Circuit weighed in, the District Court opinion had spawned a series of piggy-back class actions throughout the country. Ultimately, the arguments advanced by Alan and his team prevailed, as the U.S. Supreme Court unanimously ruled in favor of the credit-card industry in *Smiley v.*

Citibank (South Dakota), NA, thus bringing all of the ancillary fee class actions to an end.

In February 1995, Alan, along with Jeremy, John and Burt, left Wolf, Block to found the Consumer Financial Services Group at Ballard Spahr. Alan has led the Ballard Spahr CFS Group since that time. Alan then led the growth of the Group to include well over 100 attorneys, spread throughout Ballard's 14 offices, making it one of the largest and most well-respected consumer financial services practices in the country.

At Ballard, Alan pioneered the use of arbitration provisions in consumer financial services products, including credit cards, auto finance and leasing transactions and bank deposit contracts. He is the first lawyer in the country to include explicit class action waiver language in arbitration provisions. Since that time, Alan has directed regular improvements to consumer arbitration agreements, consistently coming up with new ways of making each new variant more consumer-friendly. Alan and the Group have now enforced dozens if not hundreds of Ballard Spahr and other arbitration agreements in the face of a host of litigation challenges and have represented a number of the leading industry trade groups in defending arbitration before Congress and the CFPB. (On March 10, 2015, Alan was one of three industry lawyers chosen by the CFPB to testify at a field hearing held in Newark, NJ contemporaneously with the release of the CFPB Arbitration Study pursuant to Section 1028 of the Dodd-Frank Act.) After more than a decade of litigation over the enforceability of class action waivers in arbitration contracts, the U.S. Supreme Court, in *AT&T Mobility LLC v. Concepcion*, upheld Alan's creation, vindicating class action waivers in arbitration agreements under the Federal Arbitration Act notwithstanding state law to the contrary. In *Concepcion*, Alan filed an amicus brief on behalf of the American Bankers Association, Consumer Bankers Association and other trade groups.

Client service was hardly Alan's sole contribution to the field of consumer financial services. Alan served as Chair of the American Bar Association Committee on Consumer Financial Services from 1986-1990. In that capacity, Alan was instrumental in launching an innovative consumer fellowship program where the ABA pays the registration and travel expenses of four consumer advocates to attend and participate in the activities of the Committee. (He also takes great pride in having instituted the Committee's bi-annual Winter meetings at Park City

or other ski resorts.) Alan has chaired the Practising Law Institute's Annual Institute on Consumer Financial Services since its inception in 1995. This program, which is held each year in New York City and Chicago, is widely considered the premier CLE program in the country for consumer financial services attorneys. Not coincidentally, he was also the first President of this College from 1996-1998.

On July 21, 2011 (the day the CFPB commenced operations), Alan's efforts over a period of months culminated with the launch of CFPBMonitor.com, a blog devoted to doings at the CFPB. The blog has thousands of subscribers and, for three years running, has been named as one of the top 100 law blogs by the ABA Journal and now serves as one of the leading sources of information on the CFPB.

Since 2006, Alan has been recognized annually by Chambers USA as a leading lawyer in banking and finance, and, since 2007, has been recognized annually by The Best Lawyers in America as a top financial services lawyer. Alan was selected as one of The National Law Journal's 2015 Litigation Trailblazers. Alan is currently an adviser to the American Law Institute (ALI) in connection with its ongoing project to create a Restatement of the Law Third, Consumer Contracts.

As suggested by the above summary of Alan's career, Alan's influence on the law of consumer financial services will be felt for many years. But far more important to Alan, he is also a loving husband to his wife Ellen and the proud father of three children (Rachel, Adam and Jared) as well as two grandsons (Austin and Ryder). The presence at this dinner of Ellen, Alan and Ellen's children and their husband and significant others testify to the family's love and pride.

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Alan is a most deserving recipient of the Proxmire Award. He has forever altered the course of consumer financial services law.