Fair lending from a veteran's perspective

Andrew Sandler has seen it all, and looks ahead as fair-lending evolves

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For about a quarter century now, marked first by the settlement in the 1992 *Decatur Federal Savings* case and as recently as June's *BancorpSouth Bank* consent decree, fair-lending law has been a prime item on the banking industry's radar. Through all that time attorney Andrew Sandler has been in the thick of it, working with banks under investigation or embroiled in cases where some variation of fair-lending violation has been alleged.

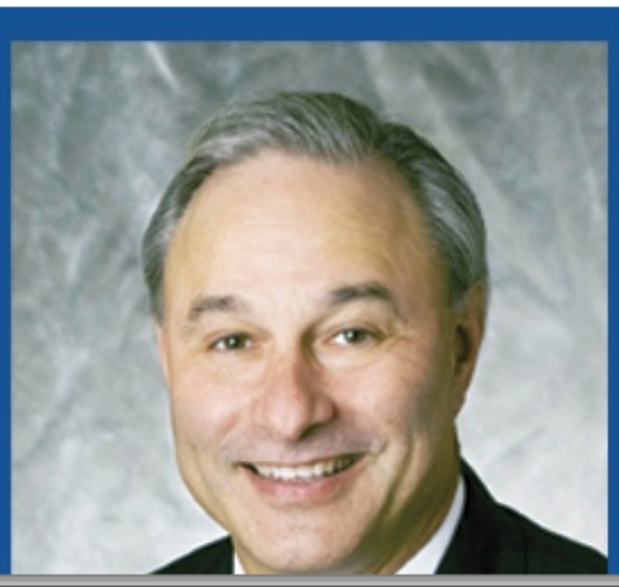

How will the upcoming election affect fair-lending enforcement? Expert Andrew Sandler addresses that in the course of an exclusive interview.

Fair-lending investigation and litigation has been an evolving legal area, dominated for most of that quarter century by the Justice Department and its developing ways of evaluating banks' performance.

Justice's techniques of choice have changed over the years. Along the way, one of the most significant, and most controversial wrinkles was adoption of the disparate impact approach to fair-lending enforcement. This expanded from the traditional evaluation of disparate treatment—outright discrimination in lending—to encompass unintentional discriminatory effect on minorities or other protected groups. This legal theory does not require the Justice Department nor private plaintiffs to prove *intent* to discriminate, only the apparent resulting discriminatory *result*.

Sandler and his current firm, BuckleySandler LLP, wrote an analysis attacking this theory on behalf of the American Bankers Association in 2012. Yet, the theory has survived attempts to unseat it, culminating in the Supreme Court decision to uphold disparate impact in the *Texas Department of Housing and Community Affairs* v. *The Inclusive Communities Project, Inc.*

"Prudential regulators often make it very difficult for a bank to challenge a fair-lending case. They make it clear that they would look with dismay on litigation"



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