

Commercial Financial Services Brief: Claims for Attorney's Fees under Loan Documents

April 19, 2012

In its recent decision in the matter of *United Prairie Bank - Mountain Lake v. Haugen* (March 14, 2012), the Minnesota Supreme Court shook loan collection to the foundation. Loan documents routinely provide for borrowers to pay the lender's attorney's fees in the event of a default by the borrower. Traditionally, when suit was brought by a lender to enforce loan documents, a claim for attorney's fees would be made and the judge would determine the reasonableness and amount of attorney's fees that would be awarded to the lender.

In the *Haugen* case, the borrower argued that a lender's claim for attorney's fees is subject to the borrower's right to demand a jury trial on the issues of whether attorney's fees are payable and both the reasonableness and amount of the fees. The Minnesota Supreme Court agreed and determined that the Minnesota State Constitution gives a borrower a right to demand a jury trial regarding a claim for attorney's fees under a contract (including both loan documents and other types of contracts). Although the lender in this case has asked the Supreme Court to reconsider this issue, it is uncertain whether the Court will grant the request. At this time, Minnesota is the only state that provides a right to a jury trial on issues related to attorney's fees.

This decision has several implications for lenders. First, this will likely add significant cost in both fees and time to collect attorney's fees from defaulting borrowers. It certainly gives borrowers additional leverage in negotiating with their lenders. You may see an immediate response to this decision in any pending actions with counsel for borrower's now making a demand for a jury trial on the issue of attorney's fees. Lenders will need to make a tactical decision whether to pursue a claim for attorney's fees.

Second, the lender will be required to prove up the amount of the fees that were incurred and that they were reasonable to a jury—which may not be sympathetic to either the lender or its attorneys. A lender will need to carefully consider whether to assert a claim for attorney's fees in consultation with its legal counsel. A claim may be particularly challenging in an action against individuals (whether borrowers or guarantors).

Third, it is unclear whether a waiver of jury trial in commercial or agricultural loan documents (including workout / forbearance agreements) will be effective as to claims for attorney's fees. You should consult with your legal counsel to determine whether loan documents that contain jury trial waivers should explicitly



address the matter of attorney's fees in addition to other claims under the loan documents.

Fourth, because this is a constitutional matter, the legislature cannot simply enact a law to take away the right of a borrower to demand a jury trial. A constitutional amendment would be required to change this decision.

Finally, it is important to note that the Court's decision does not extend to other fees and disbursements such as court costs.

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