

A graphic of a target with several arrows hitting the bullseye, rendered in shades of blue and green, serves as a background for the text.

CTA/CTP
CERTIFIED TURNAROUND ANALYST
CERTIFIED TURNAROUND PROFESSIONAL

LENDER LIABILITY 101

A SPECIAL PRESENTATION IN PARTNERSHIP WITH
THE NEW YORK INSTITUTE OF CREDIT



AGENDA

(ALL TIMES EST)



Agenda & Introductions	5 minutes	1:00pm
Basics of Lender Liability <ul style="list-style-type: none">• <i>What is it?</i>• <i>What could trigger a claim?</i>	15 minutes	1:05pm
Areas of Caution, and Pragmatism <ul style="list-style-type: none">• <i>What are example warning signs?</i>• <i>How can I prepare?</i>	15 minutes	1:20pm
Remedies and Best Practices <ul style="list-style-type: none">• <i>What should be done if a claim arises?</i>• <i>What are the best ways to avoid a claim?</i>	15 minutes	1:35pm
Q&A	10 minutes	1:50pm

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INSTRUCTORS



Frank Turner, CTP

- Senior Strategic Consultant, KCP Advisory Group, LLC
- TMA Certification Oversight Committee, Member
- TMA New Jersey, Member



Michael Lichtenstein

- Chair Bankruptcy/Creditors Rights Group, Shulman Rogers



Robert Katz, CTP

- Managing Director, EisnerAmper LLC
- Adjunct Professor, Temple University
- TMA Certification Oversight Committee, Member
- TMA Philadelphia/Wilmington, Member

BASICS OF LENDER LIABILITY



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BASICS OF LENDER LIABILITY

- Generally comes about in a distress situation
- Breaches of good faith and fair dealing
- Breach of contract
- Operational control
- Was the approach/position reasonable?

What is it?

*What could trigger
a claim?*

AREAS OF CAUTION & PRAGMATISM



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AREAS OF CAUTION AND PRAGMATISM



AREAS OF CAUTION

- Interference of contracts
- Imposing management decision making and control
- Directing priority of payments
- Thorough review of loan documents

What are example warning signs?



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AREAS OF CAUTION AND PRAGMATISM



MAINTAINING PRAGMATISM

- Lender Liability are still far and few in between
- Step Back “Catch a Breath”
- Perform a good self-assessment before the lender acts
- Making the claim... can you afford to?
... can you afford *not* to?

How can I prepare?



REMEDIES & BEST PRACTICES



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REMEDIES AND BEST PRACTICES

POTENTIAL REMEDIES TO LENDER LIABILITY CLAIMS

- Monetary judgements
- Equitable subordination

*What should be done
if a claim arises?*

REMEDIES AND BEST PRACTICES

HOW TO AVOID PROBLEMATIC SITUATIONS

- Avoid trying to be the “playground bully”
- Clearly written documents and well explained covenants, remedies and fees
- Set performance benchmarks rather than directing specific actions
- Set budget with broad milestones on improved liquidity and operational performance
- Increase financial reporting and periodic updates from management

What are the best ways to avoid a claim?

Q&A

What do you need more clarity on?

What are you still wondering?

In what ways can you see this applying to your work?



THANK YOU FOR ATTENDING!

Please email certification@turnaround.org if you ...

- have any *follow-up questions* following today's session,
- are interested in *upcoming TMA education sessions*,
- or, want to learn more about the *Certified Turnaround Analyst (CTA)* or *Certified Turnaround Professional (CTP)* designations

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