

EMERGING PAYMENTS AND PREPAID

As the payment industry utilizes new technologies to become more dynamic, efficient, and cost-effective, industry innovators must increasingly depend on legal counsel who are adept at advising on legal issues related to the full range of emerging and prepaid payment mechanisms. Prepaid payment solutions are the fastest-growing emerging payments sector and have reached a scale and scope that was barely imagined even a few years ago. Even the most innovative payment solutions generally involve elements of the legacy payment networks, which makes it crucial to have an advisor who understands the underlying operational and banking infrastructure of how payments are processed and how money is traditionally transferred.

DWT's payments team feels that it is critical not just to monitor legal and regulatory developments, but to understand business and technology trends and developments as well. We undertake to do that in several ways, including:

- **Active engagement in industry-focused events.** We send our payments team out to engage in dialogue with leaders from across the emerging and prepaid payments ecosystem at numerous thought leadership conferences, including NBPCA's Power of Prepaid, ACI's National Forums on Emerging Payment Systems, Prepaid Card Compliance and Virtual Currency, NYPAY, Empire Startups FinTech Conferences, Money 2020, LSI's Conferences on Mobile Payments Law, the RAMP Advanced Commerce and Mobile Retail Services Summit, Mobile Commerce World, American Bar Association conferences (including speaking as part of the Minority Counsel Program), American Bankers Association conferences, and the International CTIA Wireless expo. Many firms have a partner that they designate to engage for such activities; we, however, make it a priority for our entire team to be active in these forums so as to better develop our talent to meet the current and future needs of our clients. Some firms talk about a "deep bench" – we prefer to think that we field starting players at every position. Consequently, many members of our experienced and diverse team, including both partners and associates, have served as co-chairs, presenters, panelists, and moderators at each of these conferences. The perspective, insight, and relationships that we gain and foster through the direct contact with regulators, business leaders, other outside counsel, and in-house counsel at such events enable us to help our clients anticipate where the market is moving and how to assist our clients to best take advantage of the ever-changing competitive landscape.
- **The development and proliferation of our payments website, www.paymentlawadvisor.com (or PLA).** We use PLA to offer commentary on new developments in the payments world that seem particularly significant, as well as to provide resources that we believe can be helpful to others who are tasked with anticipating, understanding and addressing these developments. We focus on writing about topics and adding resources that we hope our clients can use to broaden and deepen their knowledge about all aspects of the payments world, from regulatory and legislative developments to technological advances to transactional templates. These same resources also serve as knowledge management tools for us and our clients.

FOR MORE INFORMATION:

Andrew J. Lorentz

Partner
202.973.4232
andrewlorentz@dwt.com

James H. Mann

Partner
212.603.6482
jamesmann@dwt.com

Norman B. Page

Partner
206.757.8117
normpage@dwt.com

Scot D. Tucker

Partner
206.757.8160
scottucker@dwt.com

- **Creating interdisciplinary client teams.** Comprised of leading lawyers from our telecommunications, technology, intellectual property, data security and privacy, health care, and litigation practices, along with our payments lawyers, these interdisciplinary teams have been a major element in the success of our clients and our ability to provide comprehensive support across an array of legal and strategic issues.

We assist clients with issues involving virtually any prepaid or other emerging payment technology or system, including payment cards; biometrics; emerging network technologies; stored value; near field communication (NFC); general purpose reloadable prepaid cards; online person-to-person (P2P) payments; virtual currency; electronic cash; account-to-account (A2A) payments; Electronic Bill Presentment and Payment (EBPP); mobile card acceptance; cloud-based solutions and payment processing; Internet, mobile, and contactless payments; next-generation credit and rewards cards featuring microcomputers; multi-purse cards; digital and mobile wallets; remote deposit capture; and more.

With a payment systems team few firms can match for depth and breadth, we offer the full scope of services required to operate at any point in the payment process to a range of clients, including major card issuers, technology companies, program managers, processors, and merchants. Our practice includes Fortune 100 financial institutions and global corporates, medium-sized enterprises, and VC-backed insurgents. We also have extensive experience counseling clients on the regulatory and compliance issues associated with payment systems transactions and are fully experienced in structuring such transactions, including handling program agreements, portfolio purchases and sales, and processing agreements.

Transactional depth and relevant experience

We have represented major issuers, retailers, processors, technology providers, and program managers in negotiating and documenting hundreds of agreements for the issuance and management of co-branded general-purpose credit cards; co-branded debit cards; private-label cards, general purpose reloadable prepaid cards, open-and closed-loop gift cards; loyalty, rewards, and points programs; virtual currency; payment processing arrangements; and online marketplaces. We have handled many other aspects of payment systems and programs, including both major commercial agreements and customer disclosures and agreements for use online, for mobile commerce, on the telephone, and in person, across a wide range of industries from airlines to global oil companies and including 529 plans, healthcare, and agreements for sports teams.

A representative sample of our experience includes:

Mobile payments

- Representation of major financial institutions in every major mobile payment platform, including Google Wallet, Apple Pay, Android Pay, Samsung Pay, and CurrentC, and in the development and deployment of other mobile payment solutions involving technology providers and merchants.
- Representation of a major technology OEM acting as a token requestor and mobile wallet provider in regulatory and transactional matters with networks for a tokenized mobile and remote payment solution.
- Representation of a major financial institution in implementing a mobile P2P payment solution with a leading provider of mobile payment services in the U.S.
- Representation of a major financial institution in implementing a mobile ACH-based P2P payment solution in the U.S.
- Representation of a major financial institution in implementing a mobile payment solution in the Caribbean.
- Representation of a major issuer on consumer regulatory issues associated with an iPhone application.
- Representation of a major financial institution with respect to a BIN sponsorship agreement to issue a prepaid account for a mobile wallet.

- Representation of a technology client in structuring, documenting and negotiating a technology license and services agreement in connection with the client's development of a mobile payments processing platform.

Money transmitters

- Representation of a global technology company in obtaining its own national system of state money transmitter licenses, assessing money transmitter issues for numerous products and services, such as stored value, online marketplaces, payment processing, virtual currency, and other related initiatives, including (with U.K. counsel) pursuit of an e-money issuing license in the European Union.
- Representation of foreign-based payment providers in evaluating the applicability of U.S. money services businesses laws and in proceedings before state financial services regulators.
- Representation of a licensed money transmitter in evaluating impact of innovative rewards and loyalty programs on money transmitter compliance.
- Representation of payment processing and other program managers and technology providers in structuring operations for money transmitter compliance.
- Representation of companies in responding to state inquiries regarding unlicensed money transmission.
- Representation of a major licensed money transmitter and retailer in structuring and documenting innovative debit, prepaid, and gift card arrangements.
- Representation of a nationally licensed, cash-based money transmitter on regulatory and related agency matters.
- Representation of private equity investors in purchasing an established major international money transmitter.
- Representation of numerous companies providing cash management, automated accounts payable service, and other outsourced treasury management services.
- Numerous engagements to conduct due diligence of prospective money transmitter partners for established companies.
- Representation of foreign-located money services businesses and payment processors offering products and services to U.S. residents.
- Representation of applicants in various states for money transmitter licenses and FinCEN registration issues.

Prepaid products and services

- Representation of a major international prepaid program manager on regulatory and transactional issues for matters relating to their prepaid products and reload network.
- Representation of a credit union and prepaid issuer for its general purpose reloadable prepaid card and associated international remittance product and functionality.
- Representation of two major card issuers in launching their first consumer prepaid products, including documenting and negotiating the processing agreements and money transmission agreements, as well as handling customer documentation and collateral.
- Representation of a prepaid program manager for a college savings gift card product and a payroll deduction product for college savings.

- Representation of major wireless carriers in launching co-branded general purpose reloadable prepaid card programs, including remote deposit capture capability.
- Representation of many retailers and program managers for gift card, gift transfer, stored value, and related prepaid products and services, including highly-sophisticated reloadable products.
- Representation of a global retailer in evaluating legal strategies to combat fraud and revamp its terms and conditions and associated processes in connection with a sophisticated closed-loop mobile-based prepaid card product.
- Representation of a major U.S. wireless carrier on its prepaid program and associated billing issues.
- Representation of program managers in connection with prepaid programs for receipt of tax refunds and related tax refund anticipation products.
- Representation of prepaid program manager on regulatory and transactional matters involving innovative mobile-only prepaid product offering.

Unclaimed property

- Representation of major card issuers, technology companies, game publishers, and retailers on state unclaimed property laws, including product structuring, counseling, audits, product wind-down, and other matters.

Virtual currency

- Representation of financial institutions, technology companies, and game publishers in evaluating virtual currency schemes and documenting and negotiating arrangements for the use and acceptance of virtual currency.

Regulatory and legislative experience

We have significant experience advising clients on a wide range of regulatory and legislative issues in financial services. Certain representative engagements include:

- Advising clients on legislative developments in prepaid and money transmission, including analyses and markups of federal and state proposed legislation, attending hearings on behalf of clients, and meeting with regulators regarding virtual currency.
- Providing ongoing advice to clients, including large online retailers, regarding Gramm-Leach-Bliley Act (GLBA), FCRA, and SB1 issues.
- Providing ongoing advice to major U.S. and non-U.S. financial institutions regarding Regulations Z and B as well as Title X of the Dodd-Frank Act.
- Assisting major issuers with comment letters regarding Regulation Z and Regulation E amendments.
- Advising a large card issuer on the new authority of state attorneys general in the wake of the Dodd-Frank Act.
- Advising major financial institutions, an ID-theft-prevention company, and a major cable company regarding the FCRA.
- Advising retailers, technology providers, and financial institutions on the anti-money-laundering rules under the Bank Secrecy Act and implementing FinCEN regulations and guidance, and state money transmitter and payment instrument laws.
- Advising large-scale retailers regarding rent-a-bank issues.

- Providing advice on compliance with state and federal consumer protection and credit laws and the structuring, negotiation, and documentation of payments and banking agreements and infrastructure for a major peer-to-peer lending website.
- Offering regulatory advice and negotiating and documenting agreements and opinions for a national broker-dealer and affiliated banks to participate in an FDIC-insured cash sweep program.
- Providing advice and counseling to a major Internet service provider on consumer protection and compliance with Payment Card Industry Data Security Standards.