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After Judge's Order, Uncertainty in TD Bank Law Dept.

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In the wake of Judge Marcia Cooke's [recent sanctions against TD Bank and outside counsel Greenberg Traurig](#) for discovery violations in the Coquina Investments litigation, it's not yet clear what changes the bank might make to its law department.

In April, TD Bank general counsel John Opperman left his position and has since held an advisory role at the bank. In a phone interview with CorpCounsel.com, he said that he has plans to retire soon, but would not comment on any specifics as to what went wrong during the Coquina litigation.

Whether Opperman's departure has any relation to the bank's litigation of suits brought by investors in the Scott Rothstein Ponzi scheme is not yet know. But Vincent Catanzaro, global discovery manager for DuPont, says that the move is "not surprising, since changing GCs is how you make changes to the department."

The changeover at the top appears thus far to be the biggest shift at TD. None of the other dozen or so in-house lawyers involved in the Coquina litigation has lost their job. Since May, Marjorie Gross has served as the bank's interim GC. It is rumored that [Simpson Thacher & Bartlett's](#) Ellen Patterson is being considered for the permanent position.

Only one current in-house lawyer was named in [Judge Marcia Cooke's order \[PDF\]](#): the bank's head of U.S. litigation, Leo Doyle, who was singled out for his role in the discovery blunders. But from outside the law department, it is difficult to determine who bears actual responsible for the discovery mistakes.

TD Bank spokesperson Rebecca Acevedo told Corporate Counsel sibling publication the Daily Business Review that the bank disagreed with the judge's order and intended to challenge it. Another bank spokesperson,

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During the May 17 and 18 sanctions hearing, when David Mandel, counsel for Coquina, attempted to ascertain from Vincent Auletta, TD Bank's associate global head of enhanced due diligence, who in fact was in charge of the Rothstein litigation from an in-house perspective, Cooke sustained defense counsel's objection to the query.

In Coquina's [supplemental memorandum \[PDF\]](#) regarding the defendant's discovery misconduct, submitted after the sanctions hearing, Mandel wrote:

Tellingly absent from TD Bank's account is any mention, let alone direct testimony, of the in-house lawyers or other employees who supervised this litigation and would have interacted with outside counsel on a regular basis. The bank brought no witnesses to explain who internally made decisions concerning the case and oversaw Greenberg's handling of its defense, including discovery.

Mandel went on to say that the bank and its outside counsel "put on a staged performance," with both sides "pointing the finger at the other."

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Central to TD Bank's defense at trial was its contention that it did not identify Rothstein's firm as a high-risk customer, thus not subjecting those accounts associated with the firm as warranting enhanced due diligence. At the sanctions hearing, TD Bank's counsel referred questions about why certain documents were allegedly withheld or altered to Greenberg. Regarding the production of a black-and-white CDD document (which Cooke called out as an example of the bank's discovery errors), TD Bank's counsel said:

I don't know precisely what the representation was or when it was made or under what circumstances. I think that's probably better addressed by Boies Schiller on behalf of the Greenberg folks. We intend to demonstrate here, at the trial, that TD Bank provided all of the documents that are at issue here.

Cooke flatly rejected the explanation. "But the ones that are most critical didn't show up until after the barn door was closed, verdict entered," she said during the sanctions hearing. "I mean, doesn't that concern you a little bit? It concerns me."

In Coquina's supplemental memorandum regarding the defendant's discovery misconduct, Mandel wrote:

The notion that no one at the bank, including its many in-house counsel—at least 11 of whom participated in the case—supervised outside counsel's conduct of discovery in a case of this scale and stakes is unthinkable; no institutional litigant of TD Bank's size and sophistication would approach risk so cavalierly.

In testimony given May 18, Auletta confirmed that he had been designated by the bank as its corporate representative regarding money-laundering matters. But Auletta testified that he "would not know" how often anyone from the general counsel's office was involved in the litigation.

Auletta said that throughout the Coquina litigation, the only interaction he had with any in-house lawyer was with Doyle. And that "was regarding setting up scheduling for depositions."

Auletta added, however, that it was outside counsel who prepared him for depositions as the bank's corporate representative in three separate Rothstein-related matters: Coquina, Emess Capital, and Razorback.

In the Coquina matter, Auletta submitted a sworn affidavit claiming a crucial document, titled "Standard Investigative Protocol," did not exist. The document was later discovered after the Coquina trial had concluded.

When asked by Mandel whether TD Bank had a policy regarding officers signing affidavits for court, he said he didn't know. Mandel went on to inquire whether he was aware of an in-house lawyer reviewing the affidavit before it was submitted to the court, to which he replied, "Once it was sent to [outside counsel], I'm not sure where it went."

See also: ["TD Bank In-House Counsel Sanctioned by Rothstein Judge," CorpCounsel, August 2012.](#)

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