LEGAL UPDATES

PUBLISHED: NOVEMBER 7, 2025

Wisconsin NBA Preemption Case Is Voluntarily Dismissed

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As we last updated, the Wisconsin Supreme Court accepted review of *Riffard v. Bank of America*, which raised the question of whether the National Bank Act (NBA) preempts the Wisconsin Consumer Act's (WCA) notice of default and right-to-cure requirement. However, before Supreme Court briefing occurred, petitioner voluntarily dismissed the appeal and the court dismissed the case on November 5. This leaves the court of appeals decision to stand.

In *Riffard*, the Wisconsin Court of Appeals considered whether the WCA right-to-cure notice requirement is preempted by the National Bank Act. The court held that the WCA right-to-cure notice requirement is merely a state debt collection law that does not significantly interfere with a national bank's lending powers and, therefore, is not preempted by the NBA. In the court's view, the right-to-cure notice requirement arises only when a national bank wants to pursue a defaulted debt in court and governs the process of debt collection—a traditional area of state regulation. The court held that the WCA notice requirement does not regulate the terms of credit or place conditions on the bank's lending relationship with its customer. The court concluded that the WCA right-to-cure notice only incidentally affects a national bank's lending powers.

To challenge this decision, in *Riffard* the bank filed a petition for review to the Wisconsin Supreme Court. In its petition, the bank argued that the WCA's default and right-to-cure notice requirements effectively set the terms of credit, including when a loan may be called due and payable, and condition the acceleration upon providing the customer with an opportunity to cure. And the bank pointed out that the WCA forces banks to restore credit privileges to curing borrowers on terms as though no default had occurred. The bank argued that these effects significantly affect the terms of credit and thus

significantly interfere with the national bank's lending powers. Accordingly, the bank argued, the WCA requirements are therefore preempted by the NBA.

In September, the Wisconsin Supreme Court granted the bank's petition for review. As sometimes occurs, before briefing occurred the case was voluntarily dismissed at petitioner's request and the court granted dismissal. This means that the Supreme Court will not address the NBA preemption question and the Court of Appeals' *Riffard* decision stands and is controlling precedent in state courts throughout Wisconsin.

In light of *Riffard*, national banks and federal savings banks operating in Wisconsin should review their default and right-to-cure practices if they have not done so already.

Recent NBA Preemption Case Applying *Cantero*

After the U.S. Supreme Court rejected a bright-line NBA preemption test in its 2024 *Cantero* decision, federally-chartered banks have monitored how courts have applied *Cantero's* directive to conduct a "nuanced comparative analysis" to determine preemption. So far, many of the NBA preemption cases post-*Cantero* have involved two types of state laws—right-to-cure notice requirements (like the one in *Riffard*) and state mortgage escrow interest requirements.

Given the voluntary dismissal in *Riffard*, the Wisconsin Supreme Court will not get an opportunity to contribute to the growing body of case law applying *Cantero* to NBA preemption challenges.

Contact Us

We have deep knowledge of federal bank preemption, Wisconsin consumer finance law, and Wisconsin courts. If you have questions about NBA preemption or Wisconsin consumer finance laws, please contact Susan Seaman, Lisa Lawless, Becky Bavlsik, or your Husch Blackwell attorney.