

American Conference Institute's 8<sup>th</sup> Annual Conference on

# CONSUMER FINANCE CLASS ACTIONS & LITIGATION

*The essential defense forum that shapes the future of class action and litigation strategies for leading outside & in-house counsel in the consumer finance industry*

January 27-28, 2009 | Affinia Manhattan Hotel | New York

## Distinguished Co-Chairs:



*Thomas M. Hefferon*  
Partner  
Goodwin Procter LLP



*Michael S. Malloy*  
Associate General Counsel  
Bank of America

Faculty includes 24 experienced in-house counsel from:

American Express	First Data
American General Finance	Freddie Mac
Bank of America	Hyundai
Capital One	iQor
Citi	MasterCard
Countrywide	Sovereign Bank
Discover	TCF
GMAC	UBS
Greenpoint	Wachovia
	Wells Fargo

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Senior in-house counsel, top outside litigators and renowned jurists will help you:

- DRAFT **arbitration provisions** that are effective in avoiding class treatment
- REASSESS litigation and preemption strategies as a result of increased investigations and enforcement actions by **states and municipalities** against lenders
- RESPOND to the latest **TILA** and **UDAP** inadequate disclosure claims
- DEFEND against allegations that **unsuitable** loans were made by lenders/brokers
- COUNTER claims based on **predatory/unconscionable/improvident lending**
- APPLY lessons learned from recent **RESPA** case law to prevent and cure errors when managing transactions
- USE recent and emerging **FCRA** litigation developments, including the “willfulness” issue, to your advantage when defending cases
- LITIGATE consumer class actions involving **bankruptcies and foreclosures**
- MINIMIZE litigation risks of using autodialers and prerecorded messages in **collection** activities
- DIRECT an adequate response to a **data breach** and the myriad details that ensue

## View From the Bench:



*The Honorable Gerald Bard Tjoflat*  
U.S. Cir. Ct., Ct. of App., 11th Cir.



*The Honorable Ruben Castillo*  
U.S. Dist. Ct., N.D. Ill.



*The Honorable Judith H. Wizmur*  
U.S. Bankr. Ct., D.N.J.



*The Honorable David J. Waxse*  
U.S. Dist. Ct., D. Kan.

Earn  
**CLE**  
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Credits

*Plus, register for the Pre-Conference Master Class:  
Defending Against Borrower Class Actions in Federal Court –  
CAFA, Removal, Certification, Settlement and Beyond  
January 26, 2009 – 2:30 p.m.-5:30 p.m.*

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## The EVOLUTION in defending against consumer finance class actions and litigation continues:

*Courts' hostility to class action waivers in arbitration agreements...State AG investigation, UDAP enforcement, and follow on litigation...Predatory lending, discrimination, and suitability claims...National Bank Act preemption...TILA rescission...Prescreening actions and firm offer requirements...FDCPA violations... Security breach and FCRA identity theft cases... Wrongful foreclosure claims and adversary proceedings in bankruptcy court... RESPA class actions...*

It's no secret that this evolution has dramatically intensified the challenges of defending and managing these cases. And as financial services companies respond to these new risks and defend new causes of action, savvy plaintiff lawyers are working overtime to develop new strategies for bringing these complex cases. With all eyes on the industry, *the stakes are higher than ever.*

Yet in defending and managing these high-risk claims, **defense counsel face a distinct UPHILL BATTLE:**

1. **Sheer volume of litigation** – Organized, well-connected, and effective plaintiff attorneys filing large numbers of suits/theories and seeing what sticks, with the sheer volume of cases alone placing a huge burden on defense resources. Complaints now attack almost every technical and substantive aspect of loans, requiring a tremendous amount of time, energy, and money for a company to respond to and manage these claims.
2. **Inequality of position with discovery** – The burdens/costs of discovery fall disproportionately on the defense, becoming a weapon in plaintiff's arsenal rather than a fact finding tool.
3. **Negative public perception and bias against lenders** in the current "mortgage crisis" atmosphere, jeopardizing your ability to get a fair jury trial.
4. **Judges who decline to:** place reasonable limits on discovery; dismiss frivolous cases/grant summary judgment; and supervise antics of counsel.

Given this *evolution and uphill battle*, there is simply no room for error in the defense of these claims. In response, ACI is proud to bring you the essential defense forum that will shape the future of litigation strategies for leading outside counsel & in-house counsel in the consumer finance industry: **8<sup>th</sup> Annual Conference on Consumer Finance Class Actions & Litigation**. Through a faculty of 24 distinguished in-house counsel, as well as renowned outside defense counsel and jurists, this conference will provide even the most seasoned attorneys with critical insights and practical strategies needed to protect your client in this complex arena and keep him/her up to date on the emerging claims and prepared to roll out the most strategic defenses.

*PLUS*, add value to your attendance by also registering for the Pre-Conference Master Class:  
**Defending Against Borrower Class Actions in Federal Court – CAFA, Removal, Certification, Settlement and Beyond**  
January 26, 2009 – 2:30 p.m.-5:30 p.m.

Register now by calling **888-224-2480**, faxing your registration form to **877-927-1563** or registering online at [www.AmericanConference.com/CFCA](http://www.AmericanConference.com/CFCA)

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**Wendy Tyler**

Group Leader & Business Development Executive  
American Conference Institute

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## Continuing Legal Education Credits



Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of the 16.0 hours, of which 1.0 hour will apply to ethics. An additional 3.5 credit hours will apply to master class participation.

ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 13.5 hours, of which 1.0 hour will apply to ethics. An additional 3.0 credit hours will apply to master class participation.

ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

## Who You Will Meet

- In-House Counsel for Financial Institutions including Banks, Mortgage Lenders, Lease/Finance Companies, Credit Issuers and Other Consumer Finance Lenders
- Litigation Attorneys Specializing in:
  - Consumer Finance
  - Banking
  - Class Actions
  - Financial Services

2:30 p.m.-5:30 p.m. (Registration Opens at 2 p.m.)

**Master Class on Defending Against Borrower Class Actions in Federal Court – CAFA, Removal, Certification, Settlement and Beyond**



*Thomas M. Byrne*  
Partner  
Sutherland (Atlanta, GA)



*Claudia Callaway*  
Partner  
Manatt, Phelps & Phillips, LLP (Washington, DC)



*Christopher J. Willis*  
Partner  
Rogers & Hardin LLP (Atlanta, GA)



*Donna L. Wilson*  
Partner  
Kelley Drye & Warren LLP (Washington, DC)

Moderator:



*Anthony Rollo*  
Member, McGlinchey Stafford PLLC  
Co-Editor in Chief, CAFA Law Blog  
(New Orleans & Baton Rouge, LA)

The post-CAFA period has led to a massive spike in federal class actions based on consumer protection/fraud. But the statute itself, as well as the areas of removal, certification and settlement have created uncertainty and obstacles to mounting rigorous and complete defenses in federal court.

The session leaders – in this intensive, practical, and interactive class – will guide you through **today’s procedural complexities of borrower class actions** and meticulously prepare you for how to defend and manage such actions in these high-stakes venues. Immerse yourself in this unique opportunity to obtain the pragmatic strategies, solutions, and working tools needed to master the CAFA, jurisdictional, removal, certification, and settlement aspects that materially change practice and standards in borrower class actions. Action points include:

Removal Under CAFA/Federal Court Jurisdiction

- Examining the current use of CAFA to either bring borrower class actions in federal court or for removal jurisdiction
- Trends and observations in federal courts’ handling of CAFA removals, and how to effectively deal with them
- What proof of the amount in controversy may a defendant rely on in support of a CAFA removal when the class action complaint does not make a specific demand?

Certification

- Examining the current climate of plaintiffs’ success in getting classes certified and strategies for handling this environment
- Defeating certification in consumer finance class actions
- Factoring in the latest jurisprudence on the predominance prong of Rule 23 class certification
- Nationwide classes are being attempted about as often as single state classes -- how do you adapt your defense in response?
- When is partial class certification appropriate?

Settlements

- Analyzing new settlement approval standards under CAFA: coupon settlements, negative value, and fairness
- Settlements: who must be notified and the required notice content
- The regulatory notice requirement: Effectively fulfilling the duty to notify regulators of deals
- How the CAFA-required pre-notification to primary regulators and state AGs triggers other consequences in the current climate
- The use of Rule 23(b)(2): when are damages permitted to be sought?

7:20 Registration and Continental Breakfast

8:00 Co-Chairs’ Opening Remarks



*Thomas M. Hefferon*  
Partner  
Goodwin Procter LLP (Washington, DC)



*Michael S. Malloy*  
Associate General Counsel  
Bank of America (Charlotte, NC)

8:10 **Getting Arbitration Agreements and Related Class Action Waivers Enforced When Courts Are More Willing than Ever to Reevaluate Their Fairness**

Gary A. Deutsch

Senior Vice President & Assistant General Counsel  
Sovereign Bank (Villanova, PA)

David Oppenheim

Senior Counsel, Law and Compliance  
Discover Financial Services (Riverwoods, IL)



*Brian Brooks*  
Partner  
O’Melveny & Myers LLP (Washington, DC)



*Christopher R. Lipsett*  
Partner  
WilmerHale (New York, NY)

Moderator:



*Rik S. Tozzi*  
Attorney  
Starnes & Atchison LLP (Birmingham, AL)

- Examining the latest decisions about enforceability of arbitration provisions that seek to preclude class treatment
  - parsing the arguments that have won and lost
  - the range of results in different jurisdictions and situations
- Drafting an arbitration provision to be effective in avoiding class treatment, in arbitration and in court
- What issues remain for possible Supreme Court attention, after state court rulings on class arbitration issues?
- Responding to contentions that arbitration is unfair
- How to approach arbitration if it looks like there may be a class proceeding
- Factoring in the Arbitration Fairness Act and other legislative developments into the analysis

9:35 Morning Coffee Break

9:50 **Emerging State and Local Coordinated Enforcement Activities/Investigations and Their Impact on Preemption and Litigation Against Lenders**



*C. Vance Beck*  
Senior Vice President  
Wachovia Corporation Legal Division (Charlotte, NC)



*Benjamin B. Klubes*  
Partner  
Skadden, Arps, Slate, Meagher & Flom LLP (Washington, DC)



*Michael S. Malloy*  
Associate General Counsel  
Bank of America (Charlotte, NC)

Moderator:



*Bruce M. Jacobs*  
Member  
Spilman Thomas & Battle, PLLC (Charleston, WV)

States

- Examining the most recent state enforcement activities, including AG action in CA, IL, FL & MA, and drawing conclusions about what the industry can expect to see in 2009
- Parallel, coordinated activities by state enforcers
- Factoring in new state priorities imposing various forms of fiduciary duties on lenders
- How to respond to:
  - use of state licensing power to ban certain brokers and servicers
  - AGs' notice of intended settlement of class action under CAFA and their ability to object to/tweak terms
- Protecting your client when responding to probes by state enforcement authorities
- The end game: avoiding the costs and casualties of a prolonged siege and examining strategic approaches to manage and forestall follow-on litigation
- Reverse mortgages: are they the next thing for state enforcers?

National Banks and Preemption Turf Battles Asserting Parallel State Rights to Enforcement

- The current effect of *Watters v. Wachovia Bank* on the federal and state regulatory enforcement front as well as legislative developments as they relate to National Bank Act preemption
- Suits by states and state attempts to address the crisis: examining the preemption issues they raise when the target is a national bank
- What to do in response to states exercising authority over the foreclosure activities of lenders not owned by national banks
- Responding to states taking back some territory over national bank subsidiaries as carve outs to *Watters*

Suits by Municipalities: Minimizing the New Heightened Enterprise Risk for Lenders

- How the Cleveland and Buffalo claims differ
- The latest on seeking compensation/recoupment of costs from lenders and securitizers for harms supposedly caused to cities by higher than normal foreclosures
- Defending against the theories used in seeking this compensation
  - racial discrimination, reverse-redlining statutory theory
  - public nuisance/common law-tort theory
- Emphasizing the significant legal hurdles municipalities must overcome in these cases
  - lack of due process standing, which requires demonstration of an injury in fact
  - multiple causal contributors to foreclosure spike, making it difficult to assign responsibility
- Settlement strategies – how to work with municipalities without sacrificing your position

11:10 **TILA and UDAP: Avoiding and Responding to the Latest Inadequate Disclosure Claims**



*Howard N. Cayne*  
Partner  
Arnold & Porter LLP (Washington, DC)



*Heather Koenig*  
Assoc. General Counsel, Sales, Service, Execution & Marketing  
Bank of America (Charlotte, NC)

*Marisa A. Gómez*  
Assistant General Counsel, Marketing - Legal & Regulatory  
Capital One (McLean, VA)

Moderator:



*Thomas M. Hefferon*  
Partner  
Goodwin Procter LLP (Washington, DC)

Countering Class Action Claims Based on "UDAP" Laws, Including California's Civ. Code § 17200

- Setting standards for disclosure: the front-end process of avoiding claims
- Broad, nonspecific UDAP based "unfairness" claims –countering claims that a lender's practices are immoral, unethical, oppressive, unscrupulous or offensive to public policy
- "Deceptive" claims – defeating claims that the terms of a loan are deceptive or confusing to an average consumer
- How to capitalize on the critical defense themes to these claims
- How to successfully defeat UDAP claims by arguing that the suits lack the commonality requirement for class certification

Truth in Lending: Examining New Regulatory and Litigation Developments and Their Impact on Your Defense

- Setting standards for disclosure: the front-end process of avoiding claims
- Determining who is a creditor under TILA
- What recent decisions on disclosure show about class action trends in the TILA area
- Incorporating the latest TILA decisions into your strategy on preventing violations
- Key factors to consider when using TILA defenses effectively
- Factoring in recent state and regulatory TILA investigations
- Where are we headed with actions for rescission under TILA?
- Whether TILA rescission is available for class-wide relief
- Class certification for TILA rescission claims
- Whether borrowers may tender their homes in lieu of loan proceeds in TILA rescission claims
- The latest on UDAP claims being preempted by TILA

12:30 **Networking Luncheon for Speakers and Delegates**

1:40 **Suitability/Structured Unfairness Claims: Defending Against Allegations that Unsuitable Loans Were Made by Unscrupulous Lenders/Brokers**

*Ronald M. Arlas*  
Litigation Counsel  
Greenpoint Mortgage Funding, Inc. (Novato, CA)

*Susan Stocks*  
Assistant General Counsel  
Freddie Mac (McLean, VA)



*Julia B. Strickland*  
Partner  
Stroock & Stroock & Lavan LLP (Los Angeles, CA)

Moderator:



*Andrew K. Stutzman*  
Partner  
Stradley Ronon Stevens & Young, LLP (Philadelphia, PA)

- Examining emerging suitability principles in the lending context
- The application of a suitability standard to the lending industry – how to refute the arguments put forth by consumer advocates and the best industry counterarguments to use
- Factoring in recent state and proposed federal legislative approaches that address the concept of suitability for lending
- The position of the federal regulatory agencies that oversee financial institutions and what it means for your litigation tactics
- Lessons learned from the current lawsuits that are advancing concepts of unsuitable mortgages

- How to utilize “unintended consequences” when arguing against the imposition of a suitability standard
- Examining the role of the broker in selecting loan programs: fiduciary duty and apparent agency issues for lenders

3:00 **Afternoon Refreshment Break**

3:10 **Managing the Current and Future Waves of Discriminatory and Predatory Lending/ Servicing Cases**



*R. Bruce Allensworth*  
Partner  
K&L Gates LLP (Boston, MA)

*Howard S. Lindenberg*  
Associate General Counsel  
Freddie Mac (McLean, VA)

*Nicholas “Mick” Sladic*  
Senior Associate General Counsel & Vice President, Legal  
Capital One Services, Inc. (Richmond, VA)

Moderator:

*Douglas A. Thompson*  
Managing Director & General Counsel, Litigation  
Countrywide, Legal Division (Calabasas, CA)

General

- How to counter claims and make defenses that are based on predatory/unconscionable/improvident lending, when those claims and defenses remain
  - misunderstood by courts, claimants and the media
  - poorly defined or explained by law
  - misapplied to create delays or liability that directly affect servicers and assignees of loans
- What new theories are plaintiffs using to support discrimination claims?
  - what are the likely causes of action for cases claiming discriminatory mortgage lending?
- Elements of a successful defense to discriminatory/predatory lending claims

HMDA

- Emerging risks/concerns for consumer lenders stemming from new HMDA data: targets, scope, and analysis of viability of claims
- Using objective criteria to defend HMDA-related claims
- Documenting discretionary pricing
- Class certification challenges under HMDA

Equal Credit Opportunities Act

- The upsurge in ECOA claims in the lending context

Fair Housing Act

- Case trends involving racial discrimination under the Fair Housing Act and other FHA violations: what you need to prepare for

4:30 **Using the Latest RESPA Jurisprudence to Clarify How to Prevent and Cure Charge/Payment Errors When Managing Transactions**



*Stephen J. Bumgarner*  
Partner  
Burr & Forman LLP (Birmingham, AL)



*Frank A. Hirsch, Jr.*  
Partner  
Nelson Mullins Riley & Scarborough LLP (Raleigh, NC)



*Greg Walker*  
Managing Director and Counsel  
UBS Investment Bank (New York, NY)

- Adequately making the requisite RESPA disclosures in connection with federally related mortgage loans
- Lessons learned from recent violations involving kickbacks and unearned fees
- Fulfilling RESPA sections 6, 7, and 8 requirements to avoid civil liability damages, attorney fees and/or costs being imposed
- Responding to the increase over the past year in aggressive HUD enforcement of Section 8 anti-kickback rules
- The RESPA claims that are more and less likely to survive summary adjudications
- Disclosing settlement service providers
  - defending actions that use consumer fraud statutes to allege lender/creditor is paying too much for settlement service
  - allegations that such service is “hidden” from consumer
- Applicability of captive reinsurance litigation on mortgage arena
- Minimizing the risk of punitive damages in this area

5:45 **Conference Adjourns**

**Day Two: Wednesday, January 28, 2009**

7:30 **Continental Breakfast**

8:00 **Co-Chairs’ Remarks**

8:00 **In-House Counsel Insights on Preventing and Managing Consumer Finance Litigation**

*Adam Meshel*  
Managing Director, Head of Legal for Banking and Capital Markets Origination  
Citi Markets and Banking (New York, NY)

*Jane Williams*  
Senior Counsel, Litigation  
First Data (Houston, TX)

*Michael A. Schulte*  
Assistant General Counsel  
American General Finance, Inc., a member of American International Group, Inc. (Evansville, IN)



*Joseph T. Green*  
General Counsel  
TCF National Bank (Wayzata, MN)



*Mark L. LoSacco*  
Senior Litigation Counsel  
American Express Travel Related Services Company, Inc. (New York, NY)



*Eileen S. Simon*  
Group Executive, Associate General Counsel  
MasterCard Worldwide (Purchase, NY)



*Jason R. Erb*  
Assistant General Counsel & Director, Litigation  
Hyundai Motor America (Fountain Valley, CA)

Moderator:



*Matthew P. Previn*  
Partner  
Buckley Kolar LLP (Washington, DC)

### Document and E-Discovery

- Formulating a document and e-discovery plan that defends against plaintiffs' overly aggressive and expensive requests and their use of discovery as a weapon rather than a fact finding tool
- Lessons learned on discovery burdens and the exorbitant costs of discovery falling disproportionately on defendants
- Scope of info that the defense must turn over to plaintiffs

### Expertise and Coordination with Outside Counsel

- Handling the defense more efficiently and effectively through national/regional counsel and experts who have specialized expertise in a subject area
- Hiring dilemmas: when to stay in-house and when to go with outside counsel immediately; if the latter, balancing the difficulty of finding quality counsel with costs
- Consideration of alternative fee arrangements

### Case Evaluation

- Early case assessment: Evaluating the cost of defense versus chronic settlement of unmeritorious claims and the precedential value of a settlement
- Controlling future litigation: identifying trends to ward off future lawsuits; knowing when to resolve a case for economic reasons and when to pay significantly more to defend a suit
- How to reach an early and cost-effective resolution of class action claims that will not result in payment of attorney fees that are disproportionately large in relation to the amount that will benefit or can be achieved by individual plaintiffs participating in a class action

### Prevention: Reducing Litigation & Enforcement Risks

- Clearly defining terms for appropriate markets
- Providing prospective borrowers with timely, straightforward, and objective marketing materials and disclosures
- Ensuring that billing statements provide borrowers with information sufficient to make responsible payment choices
- Internal compliance assessment: Implementing training programs and compliance controls
- The benefits of early intervention; resolving disputes before consumers files suit

## 9:35 **FCRA & FACTA Litigation and the 'Willfulness' Issue: Using Recent and Emerging Developments to Your Advantage**

*William R. Thompson*  
Managing Director, Chief Counsel—Litigation  
GMAC ResCap (Fort Washington, PA)



*Linda B. Dubnow*  
Partner  
Neal, Gerber & Eisenberg LLP (Chicago, IL)



*Aaron D. Van Oort*  
Partner  
Faegre & Benson LLP (Minneapolis, MN)

### Moderator:



*Joel S. Feldman*  
Partner  
Sidley Austin LLP (Chicago, IL)

### FCRA and FACTA Litigation

- How lenders have been changing their practices to limit FCRA and FACTA exposure
- Practical defenses for these cases: what the leading cases are saying and how to apply them
- Using the latest FCRA/FACTA jurisprudence to avoid mistakes: the information you need to ensure you don't expose your client to problems
- State claims being preempted by FCRA/FACTA: what you now need to know

- Addressing the Credit and Debit Card Receipt Clarification Act and its affect on FACTA cases
- Lessons learned from the firm offer of credit cases

### Willfulness

- Examining the re-defined FCRA "willfulness" standard post-*Safeco*
- Using *Safeco* precedent to argue that a lender did not act willfully
- The impact of *Radian Guaranty* on willfulness
- Making the legal determination whether the failure to comply was "objectively unreasonable", and if so, how to analyze conduct under the recklessness standard of liability

## 10:50 **Morning Coffee Break**

## 11:00 **Litigating Consumer Class Actions Involving Bankruptcies and Foreclosures**



*William H. Leech*  
Shareholder  
Copeland, Cook, Taylor & Bush, P.A. (Ridgeland, MS)



*Terri L. Gardner*  
Partner  
Nelson Mullins Riley & Scarborough LLP (Raleigh, NC)

### Responding to Increased Litigation by Debtor's Counsel and U.S. Trustees Against Lenders Over Fees, Servicing and Accounting

- How to respond to a claim brought by U.S. Trustees or debtors' counsel to obtain sanctions against a lender for various actions taken by the lender in bankruptcy cases, particularly Ch. 13
- Application/misapplication of arrearage and mortgage payments in chapter 13: applying correct payments made by debtors to the ongoing payments and arrearages
- Avoiding deficient handling of loans in bankruptcy: filing accurate proofs of claims
- Filing pleadings that reflect the correct mortgage owner and provide accurate info on balances due
- Providing notice to the debtor before charges/fees are added to the mortgage balance
- Responding to suits for failure to adequately disclose fees/costs
- *In re Nosek* – how the fallout from scrutiny on the mortgage market can reach attorneys representing mortgage holders
  - as counsel, fulfilling the independent duty to confirm the role your client plays in the process
- National vs. jurisdiction-by-jurisdiction certification
- Bankruptcy judges' increasing skepticism of the lending industry and aggressiveness on class issues
- Special nuances in the arbitrability of claims relating to bankruptcy proceedings and the impact of the increased bankruptcy court role on mandatory arbitration clauses

### Upturn in Foreclosures: Adapting to State Task Forces, Moratoriums, Contested Foreclosures and Other Stall Tactics

- The latest cases and courts taking a much stricter stance toward foreclosure requirements
- Implications of Judge Boyko's decision requiring lenders' counsel to have an assignment in hand when they file foreclosure suit
- Assessing the importance (or lack thereof) of the chain of assignments in foreclosure cases in judicial foreclosure states
- Avoiding foreclosure claims being tossed due to deficiencies in the timing of assignments
- Statewide foreclosure prevention programs and moratoriums: dealing with the fallout
- Addressing the new stall tactic of affirmative claims in conjunction with foreclosure simultaneously filed in state and federal courts
- Successfully defending against counter-claims, including unreasonable and inaccurate charges, invalid disclosures, and unsuitable loans
- Determining reasonable attorney fees in foreclosure cases

11:50 **Fair Debt: Examining Key FDCPA Litigation Trends and Minimizing Risks of Using Autodialers and Prerecorded Messages in Collection Activities**

*Gregory E. Harmer*  
Executive Vice President/General Counsel  
iQor, Inc. (New York, NY)



*Steven A. Levy*  
Principal  
Goldberg Kohn (Chicago, IL)



*Michele L. Stocker*  
Shareholder  
Greenberg Traurig, LLP (Fort Lauderdale, FL)

*FDCPA as a Whole*

- Examining recent trends and jurisprudence on thwarting debtors' FDCPA claims and their impact on your defense strategies
- Taking steps to comply with applicable federal (FDCPA) and state debt collection statutes
  - the latest on industry groups studying FDCPA issues in hopes of promoting new legislation to address other communication issues under the FDCPA

*Autodialers and Prerecorded Messages*

- How to utilize the established business relationship exemption against claims of noncompliance with state statutes
- Minus exemption, how to comply with myriad applicable state statutes regulating autodialers and pre-recorded messages that go beyond federal law
- Obtaining a called party's prior express consent to receive calls via an autodialer and/or pre-recorded message (including calls to a cell phone) – what constitutes “express consent”?
  - steps to exclude consumers who do not consent to receive such calls from calling lists
- Ensuring compliance with the myriad other federal laws that may also apply in this area
- If litigation does ensue, how to thwart debtors' challenges to pre-recorded collection messages

12:50 **Networking Luncheon for Speakers & Delegates**

1:55 **View From the Bench: Judicial Perspectives on Class Action Theories, Defenses, Discovery, Settlement and Trial**



*The Honorable Gerald Bard Tjoflat*  
United States Circuit Judge  
Court of Appeals, Eleventh Circuit



*The Honorable Ruben Castillo*  
United States District Judge  
U.S. Dist. Court, Northern District of Illinois



*The Honorable Judith H. Wizmur*  
United States Bankruptcy Chief Judge  
U.S. Bankr. Court, District of New Jersey



*The Honorable David J. Waxse*  
United States Magistrate Judge  
U.S. Dist. Court, District of Kansas

Moderator:



*Richard E. Gottlieb*  
Member  
Dykema Gossett PLLC (Chicago, IL)

Renowned jurists will provide their insights on:

- The class action complaint (plaintiff's theories, specificity after *Twombly*, class definitions, choice of remedies)

- Early defense considerations (motions to dismiss, federal preemption, offers of judgment)
- Discovery (*Zubulake* and e-discovery, document holds, class discovery, burden issues)
- Class certification (motion practice, manageability, trial plan, class notice, interlocutory appeals)
- Summary judgment practice (timing, one-way intervention)
- Settlements (individual versus class, fairness hearings, CAFA)
- Conveying complex issues to fact-finders
- Novel approaches to trial and case management
- Judicial “pet peeves”

3:25 **Afternoon Refreshment Break**

3:35 **Data Breaches and Identity Theft: Ensuring an Effective Response and Mitigating Class Action Damages**

*Suzanne Fiore*  
Staff Attorney, Assistant Vice President  
Sovereign Bank (West Hartford, CT)

*Scott M. Murphy*  
Assistant General Counsel-Consumer Finance  
American General Finance, Inc. (Evansville, IN)



*Peter McCorkell*  
Senior Company Counsel  
Wells Fargo (San Francisco, CA)

Moderator:



*William L. Stern*  
Partner  
Morrison & Foerster LLP (San Francisco, CA)

- Techniques for identifying the source of the breach and quickly plugging the leak
- Directing the response to the data breach and the myriad details that ensue
- Engaging outside counsel – ensuring you hire people who know what they're doing in this area
- Making the decision on whether to be transparent or limiting in what you tell consumers, the media and the regulators
- Evaluating the extent of the breach and how much effort it will take to contain it
- The post-breach action plan:
  - chain of command and appropriate response
  - what about ongoing investigations?
- Working with law enforcement and your internal investigators
  - actions to limit liability to employees and customers
  - long-term containment measures
- Factoring in card issuer perspectives and strategies for recovery; acquirer perspectives; and merchant liability

4:45 **Maintaining Professionalism and Ethics in Consumer Finance Class Actions and Litigation**



*Bryan A. Fratkin*  
Partner  
McGuireWoods LLP (Richmond, VA)



*David W. Waddell*  
Partner  
Seyfarth Shaw LLP (Houston, TX)



- Communicating with class members before/after class cert.
- Analyzing and handling potential conflicts of interest
- Applying the Model Rules of Professional Conduct
- Balancing ethics in the context of class settlement

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