

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, 2010 | Millennium UN Plaza Hotel | New York

DISTINGUISHED CO-CHAIRS:



Thomas M. Hefferon
Partner
Goodwin Procter LLP



Michael S. Malloy
Associate General Counsel
Bank of America

VIEW FROM THE BENCH:



*The Honorable
Robert J. Conrad, Jr.*
U.S. Dist. Court, W.D.N.C.



*The Honorable
John C. Coughenour*
U.S. Dist. Court, W.D. Wash.



*The Honorable
Ann Montgomery*
U.S. Dist. Court, D. Minn.



*The Honorable
Michael B. Kaplan*
U.S. Bankr. Court, D.N.J.



*The Honorable
F.A. Gossett III*
U.S. Dist. Court, D. Neb.



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



*The Honorable
Richard Kramer*
San Francisco Sup. Ct.

18 experienced in-house attorneys from these companies:

American Express • American General Finance • Bank of America
Capital One • Discover • First Data • Freddie Mac • GMAC ResCap
Greenpoint • iQor • PHH Mortgage • TCF • Wachovia

...as well as leading litigators and renowned jurists will provide highly-specialized, practical information on:

- Drafting effective **arbitration provisions** to avoid class treatment
- Analyzing how new regulations and the proposed **Consumer Finance Agency** will impact your practice moving forward
- Responding to the latest TILA claims
- Emerging state and local **enforcement and investigations** and how they are impacting preemption and litigation against lenders
- Successfully working with **Attorneys General** in order to maneuver your way through the investigation process
- Litigating consumer class actions involving **bankruptcies and foreclosures**
- Tailoring your litigation strategies to manage the increase in **discriminatory loan servicing** claims
- Mitigating class action damages associated with **data breaches**
- Using FCRA litigation developments to your advantage when defending cases



DON'T MISS THE LITIGATORS' PROCEDURAL MASTER CLASS:

Defending Against Borrower Class Actions in Federal Court –
CAFA, Removal, Certification, Settlement and Beyond
January 27, 2010 – 8 a.m. to 10 a.m.

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The continuing credit crunch and its lasting impact on the consumer finance industry...

The fallout from the subprime crisis and the increase in foreclosures nationwide....

The change in administration and its greater emphasis on regulation of the financial services industry...

States taking matters into their own hands by attempting to regulate lenders and the resulting preemption issues...

...THE LIST GOES ON

As savvy plaintiff's attorneys work overtime to develop new strategies for bringing complex cases, financial services companies need to be prepared to respond to the new risks and causes of action that have and will continue to come their way.

Only one conference consistently provides even the most seasoned consumer finance litigators with critical insights and practical strategies needed to protect their clients in this complex arena and keeps them up-to-date on the emerging claims and prepared to roll out the most strategic defenses.

A January annual tradition, ACI's **Consumer Finance Class Actions & Litigation conference**, now in its 9th year, is known throughout the industry as the essential defense forum that shapes the future of litigation strategies for leading outside counsel & in-house counsel in the consumer finance industry. In a year of continued market volatility you cannot afford to miss this timely event. No other conference in the industry affords you the opportunity to network with the top outside counsel, 7 federal and state judges, and 18 top experts from **American Express, American General Finance, Bank of America, Capital One, Discover, First Data, Freddie Mac, GMAC ResCap, Greenpoint, iQor, PHH Mortgage, TCF, Wachovia** and many more.

Don't forget to also register for the Litigators' Procedural Master Class:

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

January 27, 2010 | 8:00 – 10:00 a.m.

This must-attend event will fill up quickly so register today to ensure your place. Register now by calling **888-224-2480**, faxing your registration form to **877-927-1563** or registering online at www.AmericanConference.com/CFCA



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Wendy Tyler

Head of Sales

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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
 - Creditors Rights
 - Financial Services

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MASTER CLASS – Wednesday, January 27, 2010

8:00 a.m.–10:00 a.m. (Registration Opens at 7:30 a.m.)

Defending Against Borrower Class Actions in Federal Court: CAFA, Removal, Certification, Settlement and Beyond

Stephanie Karfias

Associate General Counsel, Litigation
Capital One Services, Inc. (Richmond, VA)



David C. Holland

Executive Vice President
Rust Consulting, Inc. (Minneapolis, MN)



Christopher R. Lipsett

Partner
Wilmer Hale (New York, NY)



Anthony Rollo

Member
McGlinchey Stafford (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, has created uncertainty and obstacles to mounting rigorous and complete defenses in federal court.

The session leaders 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 observation 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
- Nationwide classes are being attempted about as often as single classes – how do you adopt your defense in response?
- When is partial class certification appropriate?

Settlement

- Analyzing new settlement approval standards under CAFA: coupon settlements, negative value and fairness
- 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 trigger other consequences in the current climate
- The use of Rule 23(b)(2): when are damages permitted to be sought?

DAY ONE – Wednesday, January 27, 2010

9:30 Conference Registration

10:00 Co-Chairs' Welcoming Remarks



Thomas M. Hefferon

Partner
Goodwin Procter LLP (Washington, DC)



Michael S. Malloy

Associate General Counsel
Bank of America (Charlotte, NC)

10:05 Opening Drill Down on New and Emerging Developments in Consumer Finance and Their Impact on Your Litigation Strategies



Thomas M. Hefferon

Partner
Goodwin Procter LLP (Washington, DC)



Michael S. Malloy

Associate General Counsel
Bank of America (Charlotte, NC)



Heather Koenig

Associate General Counsel, Sales Service, Execution and Marketing, Bank of America (Charlotte, NC)

- Recent court decisions and new legislation
- How the proposed Consumer Finance Agency will impact consumer finance litigation
- How the Obama administration's proposed regulations are impacting the consumer finance industry
- Analyzing the growing authority of state AGs
- Current loan servicing issues and claims

11:00 Arbitration in Flux: How to Enforce Agreements in Today's Climate



Bryan A. Fratkin

Partner
McGuireWoods LLP (Richmond, VA)



Martin C. Bryce, Jr.

Partner
Ballard Spahr Andrews & Ingersoll (Philadelphia, PA)



Aaron Van Oort

Partner
Faegre & Benson LLP (Minneapolis, MN)

- How proposed legislation on the use of arbitration agreements is impacting the practice
- Recent court decisions regarding the enforceability of arbitration provisions
- Effective approaches to arbitration:
 - When a class action is likely
- Impact of the federal governments proposed mandatory ban of arbitration provisions in consumer contracts
- Fallout from National Arbitration Forum and AAA recent announcements
- Uncertainty over the future of arbitration: Where is it headed in the year to come?
- Drafting an arbitration clause that will stick

12:05 Networking Luncheon for Speakers and Delegates

1:15 Truth-in-Lending: Responding to the Continuing Evolution of TILA and Its Case law



Andrew K. Stutzman

Partner
Stradley Ronon Stevens & Young, LLP (Philadelphia, PA)



Douglas A. Thompson

Partner, Bryan Cave LLP (Los Angeles, CA)
(former Managing Director & General Counsel, Litigation at Countrywide, Legal Division)



Christopher J. Willis

Partner
Rogers & Hardin LLP (Atlanta, GA)

- The latest developments on TILA
 - New standards of disclosure under the MDIA
 - Federal government's increased aggressive approach
- How the proposed amendments to TILA will impact lenders and litigators
- The surge in TILA rescission claims and practical tips for defending against them
- How courts are now handling class actions in the TILA area
- Class certification for TILA rescission claims

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2:20 **Managing Bankruptcy and Foreclosures in Consumer Finance Class Actions & Litigation**



The Honorable Michael B. Kaplan
United States Bankruptcy Judge
U.S. Bankr. Court, District of New Jersey



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



B. Rush Smith III
Partner
Nelson Mullins Riley & Scarborough LLP (Columbia, SC)

- “Hot button” issues for bankruptcy courts and trustees: stay violations; collection of fees and advances for insurance and property taxes, and notice requirements; redactions of personal identifying information and other recent developments
- Class certification in bankruptcy court: leading-edge theories advanced by class counsel and trends in court decisions
- Defense strategies for suits based on the lenders’ failure to disclose fees and protective advances
- Enforceability of arbitration clauses in bankruptcy court
- Recent trends in foreclosure claims: What is coming down the pipeline?
- Successfully defending against counter-claims, including claims of unreasonable and inaccurate fees, invalid disclosures and unsuitable loans

3:25 **Afternoon Refreshment Break**

3:35 **Emerging State and Local Enforcement Activities and Investigations and Their Impact on Preemption and Litigation Against Lenders**



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



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



Knox Dobbins
Partner
Sutherland Asbill & Brennan LLP (Atlanta, GA)

- How the Supreme Court’s preemption decision in *Cuomo, Attorney General of New York v. Clearing House Association, L.L.C., et al* will impact consumer finance litigators
 - The impact on national v. state charter banks
 - The impact on the scope of state substantive laws
- Examining the most recent state enforcement activities
- How to respond to:
 - Use of state licensing power to ban certain brokers and servicers
 - Notices of intended settlement under CAFA and the ability to object to terms
- Protecting your client when responding to probes by state enforcement authorities
- What to do in response to the state’s exercise of authority over foreclosure activity of state chartered lenders
- Settlement strategies – how to work with municipalities without sacrificing your position

4:40 **Working With AGs to Maneuver Your Way Through the Investigation Process**



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



Ashley L. Taylor
Partner
Troutman Sanders LLP (Richmond, VA)



Andrew L. Sandler
Partner
Buckley Sandler LLP (Washington, DC)

Working with the AG’s Office

- Understanding your company’s position in the marketplace
- Effectively communicating with the AG’s office to reach a swift resolution
- Preparing for multi-state coordination and enforcement

Growing Authority of the States AG

- How will the proposed Consumer Financial Protection Agency Act of 2009 increase the authority and function of the AG’s office
- Whether Congress’ proposal to allow state AG’s to prosecute national banks will lead to increased litigation
- AG’s increased authority in the enforcement of new standards for consumer products
- The role of state law in promoting consumer safety and providing compensation for injuries

5:45 **Day One Concludes**

DAY TWO – Thursday, January 28, 2010

7:30 **Continental Breakfast**

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

Marisa A. Gómez
Assistant General Counsel, Marketing – Legal Regulatory
Capital One Services, Inc. (McClean, VA)

Kristina M. Larese
Associate General Counsel
PHH Mortgage Corporation (Mount Laurel, NJ)

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

James K. McMurray
Deputy General Counsel
American General Finance, Inc. (Evansville, IN)

David Oppenheimer
Senior Counsel, Law and Compliance
Discover Financial Services (Riverwood, IL)

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

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



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



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

Moderator:



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

In-house counsel from around the country will share their best practices for handling consumer finance claims. They’ll share with you their successful strategies for internally managing claims and tell you what they are doing to prevent class actions. Points of discussion include:

Document and E-Discovery

- Formulating a document and e-discovery plan that defends against plaintiff’s overly burdensome request
- Avoiding the cost of discovery falling disproportionately on the defendants
- Determining what information the defense must produce during the discovery process

Reducing Litigation and Enforcement Risks

- Providing prospective borrowers with straightforward marketing materials and disclosures
- Ensuring that borrowers are provided with sufficient information to make informed choices in the repayment of their loans
- The benefits of early intervention: How to effectively resolve conflict before the borrower files suit

9:30 View from the Bench



The Honorable Robert J. Conrad, Jr.
United States Chief Judge
U.S. Dist. Court, W.D. North Carolina



The Honorable John C. Coughenour
United States District Judge
U.S. Dist. Court, District of Washington



The Honorable Ann Montgomery
United States District Judge
U.S. Dist. Court, District of Minnesota



The Honorable F.A. Gossett III
United States Magistrate Judge
U.S. Dist. Court, District of Nebraska



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



The Honorable Richard Kramer
Superior Court Judge
San Francisco Superior Court

Moderator:



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

In this session, renowned federal and state jurists who have presided over consumer finance matters will provide attendees with insight on current litigation trends, including effective theories/defenses, deciding cases early, discovery, and much more.

11:00 Morning Coffee Break

11:10 Tailoring Your Litigation Strategies to Manage the Increase in Discriminatory and Predatory Lending/Servicing Claims

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



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



Frank A. Hirsch, Jr.
Partner
Alston & Bird LLP (Raleigh, NC)

- Recent developments in the discrimination class actions relating to foreclosure claims
- Preparing for cases involving allegations of racial discrimination in lending
- How to counter the claims and prepare defenses
- What are the new theories being utilized by plaintiffs to support discrimination claims?
- How do claims vary by state, and how are they being handled by the courts?
- Successful defenses to discriminatory/predatory lending claims

12:05 FCRA & FACTA Litigation: Using Recent and Emerging Developments to Your Advantage

Ronald Arlas

Litigation Counsel
Greenpoint Mortgage Funding, Inc. (Novato, CA)

- 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
- How to avoid violating the FCRA for failure to provide consumers with notice
- State claims being preempted by FCRA/FACTA

1:00 Networking Luncheon for Speakers and Delegates

2:10 Fair Debt: Key FDCPA Litigation Trends

Jane Williams

Senior Counsel, First Data (Houston, TX)



Donna L. Wilson

Partner
Kelley Drye & Warren LLP (Washington, DC)

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

3:10 Afternoon Refreshment Break

3:20 Data Breaches: Ensuring an Effective Response and Mitigating Class Action Damages

Scott M. Murphy

Assistant General Counsel-Consumer Finance
American General Finance, Inc. (Evansville, IN)



William L. Stern

Partner
Morrison & Foerester LLP (San Francisco, CA)

- Techniques for identifying the source of the breach
- Engaging outside counsel – ensuring you hire the right people
- Determining when to be transparent or limiting in dealing with consumers, the media and the regulators
- Evaluating the extent of the breach and how much effort it will take to contain it
- Post-breach action plan:
 - Chain of command and appropriate response
 - Handling 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

4:20 Maintaining Professionalism and Ethics in Consumer Finance Class Actions and Litigation

CLE
ETHICS



David Waddell

Partner
Seyfarth Shaw LLP (Houston, TX)

- Communicating with class members before/after class certification
- Analyzing and handling potential conflicts in interest
- Applying the Model Rules of Professional Conduct
- Balancing Ethics in the context of class settlements

5:20 Conference Concludes

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