

# CONSUMER FINANCE CLASS ACTIONS & LITIGATION

*Expert defense strategies for in-house and outside counsel on navigating consumer class actions, government enforcement actions and increasing regulatory oversight*

January 26–27, 2012 | New York Marriott Downtown | New York, NY



### Strategies for minimizing regulatory scrutiny:



Attorney General Paula Dow  
New Jersey



Attorney General Darrell McGraw  
West Virginia



Attorney General Scott Pruitt  
Oklahoma



David C. Shonka  
Federal Trade Commission



Thomas Calcagni  
Office of the New Jersey Attorney General



Glenn Kaplan  
Office of the Massachusetts Attorney General



Tom Bates  
Office of the Oklahoma Attorney General



Joel M. Sweet  
U.S. Department of Justice



Suzan Sanford  
Office of the Michigan Attorney General

Michael Bresnick  
U.S. Department of Justice

Deborah Marrone  
Federal Trade Commission

Thomas P. James  
Office of the Illinois Attorney General

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PNC

Residential Finance Corp.

SAXON

Springleaf Finance

TCF Financial Corp.

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Stewart Title Guaranty Co.

Wells Fargo

### Attend to gain insights on:

- Analyzing consumer data to limit discriminatory lending claims
- Containing costs & managing the rising amount of mortgage and foreclosure litigation
- Understanding new MDLs, forced-place insurance claims and home equity line of credit suits
- Assessing the investigations and actions that are being brought against financial institutions, directors and officers, servicers and third parties
- Dealing with payment processors and implementing effective anti-money laundering protocols
- Judicial perspectives on the latest waves of class actions, the timing and significance of class certification and how *Wal-Mart* and *Concepcion* affect the landscape
- CFPB rulemaking, the new enforcement and supervision paradigm, navigating concurrent jurisdiction and the expanded role of state AGs
- Navigating the new definition of “*unfair, deceptive or abusive acts or practices*” in the hands of the CFPB

### Plus, hear from two esteemed panel of judges, including:

Hon. Alan J. Baverman  
U.S. Dist. Ct., N.D. Ga.



Hon. Ruben Castillo  
U.S. Dist. Ct., N.D. Ill.



Hon. Mark E. Fuller  
U.S. Dist. Ct., M.D. Ala.



Hon. Phillip Pro  
U.S. Dist. Ct., D. Nev.



Hon. Mark W. Bennett  
U.S. Dist. Ct., D. Iowa



Hon. Robert B. Collings  
U.S. Dist. Ct., D. Mass



Hon. William V. Gallo  
U.S. Dist. Ct., S.D. Calif.



Hon. Laurie Smith-Camp  
U.S. Dist. Ct., D. Neb.



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Hon. Jeffrey J. Keyes  
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In this era of unprecedented scrutiny and liability, defense strategies for avoiding and managing litigation must be sharper than ever.

Gain practical strategies from an expert faculty on how to mount a rigorous defense against aggressive plaintiffs' lawyers adept at advancing novel and innovative theories of liability stemming from a wide variety of consumer financial protection laws.

Consumer financial claims are still on the rise...settlements filled with staggering dollar amounts are being reported daily...state and federal officials continue to send a message to the industry through investigations and enforcement actions...and there are no signs these hot-button issues are slowing down. Never has there been a more important time for attorneys and in-house counsel to be able to mount formidable defenses to the myriad of claims being asserted.

In response to the complexities in the consumer space, ACI is proud to bring you our 13<sup>th</sup> National Conference on Consumer Finance Class Actions & Litigation. This nationally recognized, advanced forum is designed to bring winning strategies to even the most seasoned litigators. Our expert faculty, led by 24 in-house counsel, 11 renowned federal judges, scores of state and regulatory officials, and top defense counsel, will provide you with proven effective strategies to assert and manage complete and formidable defenses in this high-stakes arena. Conference highlights include:

- **Specialized In-House Panels led by 24 In-House Attorneys:** The benefits of this conference are realized immediately as day one leads off with two highly focused in-house sessions. With roundtables focusing on issues related to mortgage modification, foreclosure, student and auto loans, collection and credit reporting violations, and managing fee litigation, all attendees will walk away with a bevy of useful insights to integrate into their practice.
- **A Deep Dive Into Dodd-Frank and the CFPB:** With a slew of rule-writing still taking place, overlapping jurisdiction with state AGs, and a crucial yet still unclear role, all eyes remain on the CFPB. In two sessions focused on these issues, industry leaders will review the most recent developments at the Bureau to ensure attendees are up to speed with this quickly moving target. Additionally, we'll take a deep dive into Dodd-Frank §1013 to explore what "unfair, deceptive or abusive" practices may mean in the hands of the CFPB.
- **Narrowly-Tailored Panel Sessions & New Topics:** This year's event will go into the major consumer issues more in-depth than ever. We've broken down the topics to create narrowly-tailored, comprehensive panels on all of the major procedural and substantive topics litigators are dealing with today. Additionally, we'll be covering issues like the securitization process and UDAP claims, that we've never touched before.
- **Views from State and Federal Regulators:** With representation from the Federal Trade Commission, 6 Attorneys General's offices and the Department of Justice, this year's conference will provide a wealth of valuable information from the regulators on the front lines of today's enforcement actions.
- **Focused Strategy Development Workshops:** Attendees at this year's conference can kickoff the program with two highly interactive workshops that will focus on litigation strategies and business development. Our first session will help guide you through the fire of regulatory scrutiny with an extended look into strategies for dealing with state and federal agencies and responding to enforcement actions. In the second session, led by top in-house counsel, attorneys will get a front row view of the most important things in-house consider when selecting counsel. Take the opportunity to spend extended time benchmarking current strategies and devising new ones with leaders in the space. In addition, participants get to build relationships early on and develop them through the remaining two days.

#### ADVANCED STRATEGY DEVELOPMENT SESSIONS:

- A** Business Development Master Class: In-House Perspectives on Selection & Evaluation of Outside Counsel
- B** Anatomy of a Regulatory Investigation: Defending Against Enforcement Actions & Complying with Ongoing Oversight

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- *In-house counsel for financial institutions, including*
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  - o Credit Card Issuers
  - o Pay Day Lenders
  - o Collection Agencies
  - o And other consumer lenders & servicers
- *Litigation Attorneys Specializing in*
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## DAY ONE – Thursday, January 26, 2012

7:30 Registration & Continental Breakfast

### 8:00 Co-Chairs' Opening Remarks



*Thomas H. Hefferon*  
Partner  
Goodwin Procter LLP



*Greg Walker*  
Managing Director & Corporate Counsel  
UBS Investment Bank

### 8:05 A Fair Lending Case Study: Using Consumer Data to Avoid Consumer Litigation



*Eric Jon Taylor*  
Parker Hudson Ranier & Dobbs

*Janet R. Thornton, Ph.D.*  
Managing Partner  
ERS Group

When a lender receives notice that it is accused of discriminatory lending practices, it faces one of its steepest challenges. It can be a legal and public relations nightmare. Whether the claim comes from a regulator or a plaintiffs' lawyer, the lender must take quick and decisive action. By utilizing proven methods, lenders can both fight against these types of claims, and become a stronger business in the process. This case study details the steps required to address these very serious concerns with a view toward optimizing results.

Topics addressed will include:

- Early interviews and information gathering
- Data analysis
- Identification of areas where subjective decision making occurs
- Statistical modeling of decision making/disparate impact analyses
- Maintaining privilege
- Negotiating successful resolutions
- Public relations concerns
- Documenting settlements

### 8:55 In-House Roundtable on Preventing & Managing Litigation Related to Mortgage Modification, Foreclosure and Problems Specific to Depository Institutions

*Judd A. Levy*  
Senior Counsel  
HSBC - North America

*Joseph J. Patry*  
Counsel  
MERSCORP Inc.

*Karyn Caldwell*  
Vice President & Associate General Counsel  
Flagstar Bank, FSB

*Michael Ferrier*  
Vice President – Claims & Litigation Counsel  
Stewart Title Guaranty Corp.

*Gary A. Deutsch*  
Senior Counsel  
PNC Legal Department



*Joseph Green*  
General Counsel  
TCF Financial Corp.



*LeAllen Frost*  
Vice President & Assistant General Counsel  
SAXON



*David Stein*  
General Counsel  
Residential Finance Corp.



*Anne Sutherland*  
Executive Vice President, General Counsel & Secretary  
Nationstar Mortgage LLC

#### Moderator:



*Joy Harmon Sperling*  
Day Pitney LLP

Expert in-house attorneys will lead this session, solely devoted to the issues surrounding mortgage litigation, including foreclosure, common loan servicing and modification issues and the best internal procedures to avoid litigation.

- Ensuring payments are being applied correctly to loan balance, arrearages and modified loans
- Dealing with payment processors and implementing effective anti-money laundering protocols
- How are companies implementing compliance with the attorneys general's settlement agreement including loss mitigation strategies, implementing internal audits, assigning case workers and dealing with operational system overhauls
- How are banks handling the ramifications of legacy liability for failed banks in takeover situations and dealing with FDIC related issues?
- Defending against claims where in-house attorneys or the legal department as a whole is named as a defendant
- Strategies for ascertaining and defending against claims when a complaint has not met *Iqbal* standards
- Dealing with title defects after a foreclosure is retroactively deemed to have been problematic
- Dealing with overzealous discovery requests in litigation and regulatory inquiries
- Managing the uptick in 299(c) reporting
- Containing costs & managing the rising amount of mortgage and foreclosure litigation
- Establishing ownership of a loan

10:10

### Morning Coffee Break

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10:15

### In-House Roundtable on FCRA, SCRA, FDCPA, TCPA, Managing Credit Card & Fee Related Class Actions, Student and Auto Loans, Debt Collection and Trouble Spots in Credit Reporting

*Sarah Stroebel*  
Senior Corporate Counsel  
U.S. Bank

*James K. McMurray*  
Deputy General Counsel  
Springleaf Finance, Inc.

*Michael J. Galeano*  
Senior Director & Counsel  
Alliance Data



*Jeffrey I. Langer*  
Senior Counsel  
Macy's Inc.



*Rick Bellows*  
Vice President, General Counsel  
National Creditors Connection

*Jonathan Campbell*  
Senior Director & Associate General Counsel  
Capital One

#### Moderator:



*Christi R. Adams*  
Foley & Lardner LLP

In-house attorneys dealing with consumer credit cards and loans will lead this timely session and keep attendees up-to-date on the current issues related to debt collection, credit reporting, auto and student loans and credit cards.

- Where are the compliance trouble spots in Dodd-Frank, FDCPA, TCPA and SCRA?
- Best practices for avoiding FDCPA and TCPA issues
- When does a complaint constitute a bona fide dispute?
- Modifying credit reporting to comport with individual settlements
- Leaving appropriate collection messages on machines and with third parties
- The new wave of cases being brought under the FDCPA & TCPA
- Steps to comply with applicable state and federal collection laws
- Litigation updates and best practices for avoiding trouble spots in fax blasts, robo-dialing, cell phones and trade line litigation
- Obtaining proper express consent to record calls, call cell phones and comply with other TCPA provisions
- State claims and preemption by FCRA and FACTA
- Providing notice to avoid FCRA violations
- Strategies for resolving defaults

## 11:15 Dodd-Frank & the CFPB: A Look Into Today's Most Important Issues, the Status of the Bureau and Which Regulations Will Most Impact Consumer Finance Institutions & Litigators in the Next Year



*Alan J. Levith*  
Associate General Counsel  
LOGS Network

*Ken Markison*  
Associate Vice President & Regulatory Counsel  
Mortgage Bankers Association



*Thomas E. Gilbertsen*  
Venable LLP



*Nancy R. Thomas*  
Morrison & Foerster LLP

With a slew of rule writing still taking place, overlapping jurisdiction with other agencies still being worked out and a crucial yet still unclear role in protecting consumers from fraud and abuse, all eyes remain on the Bureau. In this session, industry leaders will review the most recent developments surrounding the CFPB, which are still emerging daily. Keeping up to speed with the CFPB is critical for litigators and in-house counsel...this session will make sure you're not left in the dark.

- The new CFPB/FTC rulemaking
- The enforcement and supervision paradigm
- Navigating concurrent jurisdiction
- The expanded role of state AGs and coordination with CFPB
- Preemption updates

## 12:15 Networking Luncheon for Speakers & Delegates

## 1:15 Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases To Watch



*Jeffrey S. Patterson*  
Nelson Mullins Riley  
& Scarborough LLP



*John C. Lynch*  
Troutman Sanders LLP



*Christopher Chorba*  
Gibson Dunn & Crutcher LLP



*Moderator:*  
*Cameron Azari*  
Director - Legal Notice  
Epiq Systems

In this session, attorneys who are up-to-date on the day to day happenings of courts around the country will provide insights on how district courts are applying recent holdings and the types of class actions they are seeing pop up throughout the country.

- An update on new MDLs, forced-place insurance claims, home equity line of credit suits and overdraft litigation
- The case against First American class certification issues, calculating damages, Supreme Court cert and the fallout that could result

*Michael R Mendola*  
Vice-President & Senior  
Legal Counsel  
General Counsel's Office  
HSBC Bank USA



*Robert T. Mowrey*  
Locke Lord Bissell  
& Liddell, LLP

- What new types of claims are coming down the pipeline?
- An overview of the latest suit against Chase for summary halts to equity lines of credit
- Fraudulent transactions involving payment processors
- The use of email notice and online claims processing in consumer finance settlements
- Ensuring the security of consumer data and guarding against fraud in notice and settlement administration

## 2:15 Class Action Strategy Session: How Wal-Mart and Conception Affect Class Defense, and Winning Defense Tactics for Removal, Counterclaims, Dispositive Motions & Settlement



*Scott M. Pearson*  
Stroock & Stroock & Lavan



*LeAnn Pedersen Pope*  
Burke Warren Mackay & Serritella



*Anthony Rollo*  
McGlinchey Stafford PLLC



*Cindy D. Hanson*  
Kilpatrick Townsend & Stockton, LLP

With so many class actions being filed across the country, defending against both procedure and substance of class actions has become increasingly important. In this invaluable session, class action litigators will examine the latest decisions about the enforceability of arbitration provisions, class certification, removal, notice, settlement and so much more.

- Certifying classes after *Wal-Mart* and defending against the argument that it should only be applied to employment cases
- Developing a notice scheme that will appease the courts
- Defeating arguments that courts should not apply *Conception's* holding
- Removal under CAFA
- Settlement strategies
- Contending with private attorney general actions as a way around arbitration clauses

## 3:15 Afternoon Refreshment Break

## 3:20 Understanding Debt Collection Litigation Trends and Preventing Future Lawsuits



*Michael L. Frost*  
Senior Vice President & General Counsel  
The CBE Group, Inc.



*Timothy Collins*  
Associate Director of Compliance  
Hyundai Credit America

Trends in the debt collection arena may have a dramatic impact on your business or the business of your vendors. Take an in-depth look at the litigation data and learn from the experts on how to prevent future litigation and how to respond to the current trends. Topics will include:

- Understanding statistics & data
- The reasons behind the explosive increase in consumer litigation
- Behind the scenes reasons for litigation trends
- Methods to prevent future law suits
- Strategies for calculating damages based on net worth
- Leaving appropriate messages on machines and with third parties
- The new wave of cases being brought under the FDCPA & TCPA
- Steps to comply with applicable state and federal collection laws
- Litigation updates and best practices for avoiding trouble spots in fax blasts, robo-dialing, cell phones and trade line litigation
- Strategies for mitigating the tremendous damages that can result from multiple improper collection calls and a look at whether any courts will cap damages
- Obtaining proper express consent to record calls, call cell phones and comply with other TCPA provisions
- State claims and preemption by FCRA and FACTA
- Providing notice to avoid FCRA violations

4:00

## Dodd-Frank Section 1013 & UDAP Claims: Defining Unfair, Deceptive or Abusive Practice Claims and What The New Standards Mean in the Hands of the CFPB



*Thomas H. Hefferon*  
Goodwin Procter LLP



*Douglas A. Thompson*  
Bryan Cave LLP



*Martin C. Bryce, Jr.*  
Ballard Spahr LLP



*Darren M. Welch*  
Skadden Arps Slate Meager & Flom

Among the many pages of Dodd-Frank Section 1013 charges the CFPB with enforcement powers to prevent “unfair, deceptive or abusive acts or practices” related to consumer financial transactions. While this provision seems to be nothing more than a modification on UDAP language that has been around for decades, in the hands of the CFPB, and with many long standing definition still unclear, it could turn out to be the most far-reaching provision of Dodd-Frank. Join the leaders of this session to find out:

- What practices will the CFPB target first?
- Evaluating forthcoming written guidance on the issue
- Establishing a culture of fairness within your company
- What types of products or aspects of origination and servicing may be “abusive”?
- The risk of retroactive application
- How are courts are treating common law and state UDAP claims arising out of failed loan modifications, including, among others, *Bosque v. Wells Fargo*, *Costigan v. CitiMortgage* and *Allen v. CitiMortgage*?

5:00

## Implementing Effective Defenses & Defeating Claims Related to Discriminatory & Predatory Lending

*Michael B. Goldberg*  
Senior Counsel  
Wells Fargo Law Department



*Gregory P. Dresser*  
Morrison & Foerster LLP



*Richik Sarkar*  
Ulmer & Berne LLP



*Robert Maddox*  
Bradley Arant Boult Cummings LLP

As foreclosures begin to move forward again, distressed borrowers are pulling out all of the stops to stay in their homes. Coupled with regulatory and case law developments, the environment is ripe for a quick uptick in discriminatory and predatory lending cases. Leading defense attorneys will take attendees through the current regulatory and litigation developments and discuss the prospective cases that may arise in the weeks and months ahead.

- Discretionary pricing claims after *Wal-Mart*
- A look into the latest redlining and reverse redlining cases
- An overview of the cases filed by the cities of Baltimore and Memphis and the potential for other cities to file suit
- Defending against the latest claims alleging fair lending violations
- Recent regulatory and litigation developments related to discriminatory/predatory lending, TILA, HAMP & SCRA and how these developments affect the defense of claims

6:00

## Cocktail Reception



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## DAY TWO – Friday, January 27, 2012

7:30

## Continental Breakfast

8:00

## The View From the Bench Part One: District Court Judges' Perspectives on the Current State of Consumer Finance Litigation



*Hon. Mark W. Bennett*  
U.S. Dist. Ct., D. Iowa



*Hon. Phillip Pro*  
U.S. Dist. Ct., D. Nev.



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



*Hon. Mark E. Fuller*  
U.S. Dist. Ct., M.D. Ala.



*Hon. Donovan W. Frank*  
U.S. Dist. Ct., D. Minn.



*Hon. Laurie Smith-Camp*  
U.S. Dist. Ct., D. Neb.

### Moderator:



*Stuart M. Richter*  
Katten Muchin Rosenman LLP

Led by federal district court judges, jurists will provide you with their views on the current consumer litigation and strategic insights for conveying your case to the court.

- Judicial perspectives on the latest waves of class actions, the timing and significance of class certification and how *Wal-Mart* and *Concepcion* effect the landscape
- How are judges ensuring the consumer finance industry is being treated fairly in the current environment
- Judicial perspectives on foreclosure documentation errors
  - Dealing with “robo-signing” cases, foreclosure mills and phantom notaries
  - The impact of court implemented rules, including attorney affidavits, file reviews and enhanced pleading requirements
  - Foreclosure injunctions and moratorium
- Insights on arbitration and *Concepcion*
  - The impact of *Concepcion* on class waiver provisions
  - Should financial institutions and lenders want to arbitrate? What are the advantages in a judge's eyes?
- Managing your client's reputation – what are judges hearing from juries and how might biases be effecting trial outcomes?

9:15

## The View from the Bench Part Two: Magistrate Judges' Perspectives on the Current State of Consumer Finance Litigation



*Hon. Alan J. Baverman*  
U.S. Dist. Ct., N.D. Ga.



*Hon. William V. Gallo*  
U.S. Dist. Ct., S.D. Ca.



*Hon. Tonia Bongiiovanni*  
U.S. Dist. Ct., D.N.J.



*Hon. Jeffrey J. Keyes*  
U.S. Dist. Ct., D. Minn.



*Hon. Robert B. Collings*  
U.S. Dist. Ct., D. Mass.

### Moderator:



*Andrew K. Stutzman*  
Stradley Ronon Stevens & Young LLP

Led by federal magistrate judges, jurists will provide you with their views on the current consumer litigation landscape and strategic insights for conveying your case to the court.

- Class action notice
  - Assuring the court that you are reaching your class
  - The resistance to website and email notice
- Insights on arbitration
  - The impact of *Concepcion* on class waiver provisions
  - Should financial institutions and lenders want to arbitrate? What are the advantages in a judge's eyes?
- The timing and significance of class certification
- Preliminary and final settlement approval – what are judges looking for?

10:30 Morning Coffee Break

10:40 **Regulatory Roundtable Part I: The View from Federal Regulators on Current Enforcement Initiatives**

*Deborah Marrone*

Assistant Regional Director, Northeast Regional Office  
Federal Trade Commission

*Michael Bresnick*

Assistant Chief, Fraud Bureau  
U.S. Department of Justice, E.D.P.A.

*Joel M. Sweet*

Assistant United States Attorney  
U.S. Department of Justice, E.D.P.A.



*David C. Shonka*

Deputy General Counsel  
Federal Trade Commission

*Moderator:*

*Richard J. Zack*

Pepper Hamilton PLLC



In this session, federal regulators will share what priorities are at the forefront of government efforts and how they expect to co-regulate going forward. The esteemed panel, led by the FTC and DOJ, will provide you with proven effective strategies for dealing with their regulatory body and avoiding costly investigations.

- Assessing the investigation and actions that are being brought against financial institutions, directors and officers, servicers, and third parties
- The impact of eased preemption under Dodd-Frank and where financial institutions can expect changes
- Potential actions against rating agencies and/or title companies?
- What are the biggest areas of concern for enforcement agencies right now?
- The regulatory perspective on debt collection and credit reporting hot spots
- Cooperating with investigations:
  - What to do in the first days, weeks and months
  - Regulators' pet peeves
  - Reaching consent settlements with regulators
- What are the biggest substantive areas of concern for the FTC? The DOJ?

11:40 **Regulatory Roundtable Part II: The View from State Regulators on Current Enforcement Initiatives**



*Attorney General Paula Dow*  
New Jersey



*Attorney General Darrell McGraw*  
West Virginia



*Attorney General Scott Pruitt*  
Oklahoma



*Glenn Kaplan*  
Chief, Insurance & Financial Services Division  
Office of the Massachusetts Attorney General



*Thomas Calcagni*  
Director, Division of Consumer Affairs  
Office of the New Jersey Attorney General



*Suzan Sanford*  
Chief, Corporate Oversight Division  
Office of the Michigan Attorney General

*Thomas P. James*

Consumer Counsel, Consumer Fraud Bureau  
Office of the Illinois Attorney General

*Thomas Bates*

Deputy Attorney General  
Office of the Oklahoma Attorney General

*Moderator:*

*Frank A. Hirsch*

Alston & Bird LLP



- Assessing the investigation and actions that are being brought against financial institutions, directors and officers, servicers, and third parties
- The impact of eased preemption under Dodd-Frank and where financial institutions can expect changes
- How will the states be coordinating investigations, enforcement actions and settlements with the CFPB and the FTC?
- A look at the Attorneys General's settlement and where the current objectors stand?
- What are the biggest areas of concern for the states right now?
- Cooperating with investigations:
  - What to do in the first days, weeks and months
  - Regulators' pet peeves
  - Reaching consent settlements with regulators

1:00 **Networking Luncheon for Speakers & Delegates**

2:00 **Securitization 101 for Litigators: Understanding the Mortgage Securitization Process, Where the Trouble Spots are In Relation to Today's Consumer Litigation & Explaining the Practice to the Court**



*Greg Walker*

Managing Director & Corporate Counsel  
UBS Investment Bank



*Deborah Lee Hovatter*

Spilman Thomas & Battle, PLLC



*Anthony J. Laura*

Patton Boggs LLP

*Judith Tribble*

Corporate Counsel  
Residential Finance Corp.

In response to the needs expressed by the market, join our panel of experts for a targeted primer session on the nuts and bolts of the securitization process. Targeted to the needs of litigators, this session will give attendees a basic understanding of the securitization process, point out the top trouble spots and how to defend against them, and teach you how to convey the process to the court.

- Understanding the securitization process from start to finish
- Where are the trouble spots?
- Choice of law provision
- Who are the major players in the process?
- Dealing with trustee issues and enforcement of the note
- Explaining the securitization process to the court
- Defeating common loan ownership defenses
- An update on the securitization cases & repurchase litigations still pending

3:00 **Afternoon Refreshment Break**

3:10 **Defending Foreclosure and Loan Modification Practices, Defeating the MERS, TILA, HAMP and Bankruptcy Defenses & Contending with the Recent Wave of Cases Involving Trustees**



*H. Hunter Twiford*

McGlinchey Stafford PLLC



*Ralph T. Wutscher*

McGinnis Tessitore Wutscher LLP



*Roland P. Reynolds*

Palmer Lombardi & Donahue LLP



*Donn A. Randall*

Bulkley, Richardson & Gelinas, LLP



*Thomas M. Schehr*

Dykema Gossett PLLC

Though many think the worst might be over, litigation surrounding residential mortgages continues, with new theories of liability being generated every day. In this session, attorneys leading the national scene will provide updates on the current state of affairs and take a look at the new theories of liability being generated by plaintiffs' attorneys across the country.

- Updates on recent actions and case law
- Update on MERS issues
- Defending against cases where the trustee is brought in
- Dealing with HOA, COA and code enforcement issues in foreclosure
- Getting boiler-plate answers and cross-claims dismissed
- A look into claims involving option arm payments
- Best strategies for dealing with Qualified Written Requests and updates on response time line amendments
- What is the future of reverse mortgage litigation?
- Dealing with title defects and title insurance after "bad" foreclosures
- Recent regulatory and litigation developments related to discriminatory/predatory lending, TILA, HAMP & SCRA and how these developments affect the defense of claims
- Strategies for curing defaults after a temporary modification if a permanent modification is denied
- Identifying and defending cases with systemic versus individual risk
- HAMP Litigation: What constitutes proper disclosure notices and an enforceable modification contract under HAMP?
- Proactive steps

## 4:25 Emerging Litigation Issues in the Student Loans, Credit/Debit Cards & Auto Loans Sectors



*Jeffrey D. Pilgrim*  
Grady Pilgrim Christakis Bell LLP



*Michelle A. Fox*  
Kutak Rock LLP

With so much focus on the mortgage crises in recent years, the spotlight has moved away from other consumer products. However, areas like student loans, credit and debit cards, and auto loan products continue to generate a steady stream of litigation. This session will keep you up to speed on the current litigation trends and issues in these areas.

- The claims against Cooley and New York Law School and how they may affect student loan repayment
- Payment protection/debt cancellation programs and other fee product cases
- The future of the interchange fee
- Ongoing and emerging privacy issues related to protection of consumer data and overseas call centers
- ATM sticker fee cases
- Franchise car dealers and the FTC: what does the regulatory future look like with regard to:
  - Revenue sharing
  - Spot delivery
  - Leasing
- Developments in litigation surrounding the CARD Act and FACTA
- Strategies for remediating credit card receipt litigation
- A look at the developments and strategies being used in the MDL on overdraft fees

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### 5:15 Conference Concludes

## Advanced Strategy Sessions – Wednesday, January 25, 2012

# A

1:00 – 3:00 p.m.

### Business Development Master Class: In-House Perspectives on Selection & Evaluation of Outside Counsel

speakers TBA

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- Is the client choosing the partner or the firm? Underlying partner relationships and engagement of outside counsel
- The things that clients really want to know before engaging outside counsel
- Demystifying the firm selection process
- Best practice for communications and candor with clients
- Developing relationships while putting a focus on knowledge and quality
- Pet peeves: "worst practices" that outside counsel should avoid committing
- Taking an updated look at the "virtual law firm" model and whether it has proven satisfactory to clients
- Expectations relating to litigation budgets
- In-house counsel views towards the handling of document production
- Factoring how legal fees are being structured into law firm selection and evaluation
- How do the selection processes differ for high-stakes work?

# B

4:00 – 6:00 p.m.

### Anatomy of a Regulatory Investigation: Defending Against Enforcement Actions & Complying with Ongoing Oversight



*Thomas H. Hefferon*  
Goodwin Procter LLP



*Robert Maddox*  
Bradley Arant Boult Cummings LLP

*Michael C. Flynn*  
General Counsel - Mortgage Banking  
PNC Bank

Contending with regulatory investigations is a task like no other. As the CFPB progresses and the myriad of other regulatory bodies continue their investigations into the industry, companies are contending more and more with investigations and possible enforcement actions. The litigators on this session have all guided financial institutions and lenders through the fire of a regulatory investigation and will share their top tips for weathering the storm with you.

- Complying with the OCC Consent Order and the Attorneys General Settlement: instituting additional oversight and auditing on the foreclosure process and other compliance initiatives that must be implemented
- Best strategies for surviving regulatory investigations
- What are the state and federal regulators focused on now? Where can financial institutions expect upticks?

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