

American Conference Institute's 9th National Forum on

RESIDENTIAL MORTGAGE LITIGATION & REGULATORY ENFORCEMENT

Expert strategies for in-house and outside defense counsel on navigating litigation hurdles and preparing for new and emerging government enforcement initiatives

Hear directly from the frontline on federal and state regulatory and enforcement priorities:

Michael G. Salemi
Consumer Financial Protection Bureau

Deanya Kueckelhan
Federal Trade Commission

Thomas James
Office of the Illinois Attorney General

Amber Anderson Villa
Office of the Massachusetts Attorney General

John Prendergast
Conference of State Bank Supervisors

Susan Ellis
Office of the Illinois Attorney General

Judicial perspectives from:



Hon. Cecelia G. Morris
U.S. Bankr. Ct., S.D.N.Y.



Hon. Michael J. Watanabe
U.S. Dist. Ct., D. Col.



Hon. Michael B. Kaplan
U.S. Bankr. Ct., D.N.J.



Hon. Richard S. Schmidt
U.S. Bankr. Ct., S.D. Tex.



Hon. Annette Rizzo
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September 27 – 28, 2012 | The Adolphus | Dallas, TX

Featuring in-house insights from industry experts, including:

Michael Goldberg
Wells Fargo

Chante Bowser
Freddie Mac

Joseph Patry
MERSCORP

Nathan Bouchér
American Home Mortgage Servicing

Julie Caggiano
Envoy Mortgage

Karyn Caldwell
Flagstar Bank, FSB

Janna Lewis
Fay Financial / Fay Servicing

Jason Miller
Select Portfolio Servicing

Joe Salama
Deutsche Bank

Christopher Shaheen
U.S. Bank

Jan Zemanek
Kondaur Capital

Bruce Jay Baker
Illinois Bankers Association

Obtain critical updates and strategic advice for:

- Assessing the CFPB's new and emerging enforcement initiatives and ensuring compliance in an evolving regulatory landscape
- Navigating the foreclosure process in an era of heightened scrutiny: standing, borrower counterclaims, contested foreclosures, MERS issues, and foreclosure mediation programs
- Preparing for and defending against new and innovative claims and class actions being brought by the plaintiffs' bar, including litigation arising from loan modifications and force-placed insurance
- Loan servicing: complying with new servicing standards, defending against borrower claims, and implementing effective loss mitigation strategies
- Fair lending: managing and defending against claims of discriminatory lending and assessing the status of 'disparate impact' in lending litigation and enforcement
- Mortgages in bankruptcy: prevailing against the latest bankruptcy litigation claims
- The new regulatory and enforcement paradigm: preparing for and responding to new priorities, enhanced enforcement efforts, and aggressive investigations at both the state and federal level

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Plus, add value to your attendance by also registering for the exclusive pre-conference Litigation Master Class:

Managing and Defending Against Class Actions: What Defense Counsel Must Know In Order to Avoid Class Certifications, Prevail Against New and Emerging Plaintiff Strategies, Assess the Latest Filings, and Obtain Favorable Settlements

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Led by expert in-house counsel, key regulatory and enforcement officials, top defense firms, and renowned federal and state judges from across the nation, this is the only event that will fully prepare you to manage lending, servicing, and foreclosure litigation, and keep you ahead of the curve in regards to increased enforcement efforts and the evolving regulatory paradigm at both the state and federal level.

With all eyes on the residential mortgage industry in the wake of the AG settlement, and with the recent allegations of foreclosure documentation errors and so called “robo-signing” practices still fresh in the public’s mind, it is critical that both in-house and outside counsel remain up-to-date on new and emerging borrower and investor claims as well as increased state and federal regulatory and enforcement initiatives. Further, the mortgage industry has only just begun to feel the full impact of Dodd-Frank. Now that the CFPB has turned its complete attention to residential mortgages, and given the renewed industry focus at both the state and federal level, the coming year is going to bring a wave of new litigation, comprehensive regulations, and enhanced enforcement efforts.

In response, American Conference Institute is pleased to announce its 9th National Forum on Residential Mortgage Litigation & Regulatory Enforcement. This event has been tailored to provide attendees with the insights and strategies that are needed to defend against these new claims and adapt to the evolving regulatory landscape. Our unparalleled faculty of regulatory and enforcement officials, federal and state judges, expert in-house counsel, and leading outside counsel will provide you with strategic advice, critical insights, and comprehensive updates for:

- Assessing the impact of the CFPB on the residential mortgage industry and ensuring compliance with new and emerging regulations
- Defending against borrower and investor claims, including those arising from loan modifications and alleged foreclosure documentation errors
- Adapting to evolving federal and state regulatory and enforcement initiatives in the wake of the AG settlement
- Determining what measures lenders and servicers must take in order to mitigate future liability
- Navigating the foreclosure process in an era of heightened scrutiny

PLUS, add value to your attendance by also registering for the exclusive pre-conference Litigation Master Class:

Managing and Defending Against Class Actions: What Defense Counsel Must Know In Order to Avoid Class Certifications, Prevail Against New and Emerging Plaintiff Strategies, Assess the Latest Filings, and Obtain Favorable Settlements

September 27, 2012 | 8:30 a.m. - 11:00 a.m.

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Who You Will Meet

- ✓ In-house counsel from:
 - Mortgage lenders
 - Mortgage brokers
 - Banks and thrifts
 - Loan servicers
 - Loan purchasers
 - Investment banks
 - Hedge funds
 - Private equity
- ✓ Private practice attorneys specializing in:
 - Financial services
 - Mortgages
 - Bankruptcy
 - Securities litigation
 - Consumer finance
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Day One: Thursday, September 27, 2012

8:30 Pre-Conference Litigation Master Class:
Managing and Defending Against Class Actions
(see page 7 for details)

10:30 Main Conference Registration and Coffee Served

11:10 Co-Chairs' Opening Remarks



Frank A. Hirsch
Alston & Bird LLP



Andrew K. Stutzman
Stradley Ronon Stevens & Young, LLP

11:15 In-House Roundtable: Ensuring Compliance in an Evolving Regulatory Environment, Preparing for and Managing Lending, Servicing, and Foreclosure Litigation, Enhancing Relationships with Outside Counsel, and Working With Reduced Budgets and Smaller Staffs

Michael B. Goldberg
Senior Counsel
Wells Fargo

Chante Bowser (invited)
Associate General Counsel
Single Family Portfolio Management Litigation
Freddie Mac

Nathan J. Bouch er
VP & Senior Counsel, Litigation Management
American Home Mortgage Servicing, Inc.

Julie R. Caggiano
General Counsel
Envoy Mortgage, Ltd.

Karyn A. Caldwell
First Vice President & Associate General Counsel
Flagstar Bank, FSB

Bruce Jay Baker
Executive Vice President & General Counsel
Illinois Bankers Association

Moderator:



Alan M. Warfield
Jones, Walker, Waechter, Poitevent,
Carr ere & Den ere L.L.P.

- Perspectives on the AG settlement and its impact on the broader mortgage servicing industry
 - o Likelihood of national servicing standards arising from the settlement
 - o Enforcement issues
 - o Ensuring compliance
 - Loss mitigation strategies; internal audits; operational system overhauls
- How are lenders and servicers adapting to new and emerging regulations and case law? What changes have they made?

- What do corporate counsel find to be the most challenging aspects of revamping compliance procedures and policies in the wake of Dodd-Frank?
- Where are lenders and servicers turning for guidance?
- Managing and responding to enforcement actions
 - o Tools that are available when facing an enforcement action
 - o Responding to the action
 - o Filing a motion to quash a subpoena
 - o Jurisdiction hurdles when dealing with multiple state and federal agencies
 - o Assessing the role of state attorneys general versus the role of federal agencies
- In an era of regulatory and legal uncertainty, how do you adapt your litigation strategies and settlement calculations?
- Dealing with overzealous discovery requests in litigation and regulatory inquiries
- Managing the flood of residential mortgage litigation arising from alleged foreclosure documentation errors and 'robo-signing' practices
- Establishing the ownership of a loan
- Managing and defending against claims arising from TILA, HAMP, SCRA, and RESPA
- Force-placed insurance
- Top 5 concerns of in-house counsel now and in the near-term
- Identifying and minimizing exposure to risk
- Foreclosure mediation
 - o Best practices for maximizing the effectiveness of these programs
- Lessons learned from past litigation
 - o Minimizing your exposure to future litigation and better managing future litigation
- Advising outside counsel on how to better support in-house counsel
- Top 5 issues that in-house counsel want their outside counsel to be thinking about
- How corporate counsel are responding to internal budgetary pressures
- Exploring the use of alternative fee agreements with outside counsel
- Internal and external cost-cutting
 - o What has worked and what has not
- In-house staffing solutions for stretched legal departments

12:45 Networking Luncheon for Speakers and Attendees

1:50 Adapting to a New Regulatory and Enforcement Paradigm: The Ongoing Impact of Dodd-Frank and the Emergence of the CFPB



David N. Anthony
Troutman Sanders LLP



Richard J. Andreano, Jr.
Ballard Spahr LLP



Thomas M. Hefferon
Goodwin Procter LLP



Richik Sarkar
Ulmer & Berne LLP



Andrew K. Stutzman
Stradley Ronon Stevens & Young, LLP

Assessing the CFPB's New and Emerging Enforcement Initiatives and Ensuring Compliance in an Evolving Regulatory Landscape

- Assessing the CFPB's actions to date
- Evaluating the bureau's rule-making and enforcement activities and authority
- What to expect regarding the new mortgage servicing rules
 - The emergence of national mortgage servicing standards
- CFPB initiatives and enforcement efforts relating to discriminatory lending and 'disparate impact'
- Forced-place insurance
- Where is the CFPB likely headed in the coming months?
 - Impact on claims from the plaintiffs' bar
- CFPB oversight of nonbank 'larger participants'
- Preparing for CFPB examinations
 - Non-depository institutions
 - Requests for information, especially targeted to servicers
 - What the CFPB is looking for
 - Consumer protection issues
 - What to expect from a CFPB examination and how to prepare for it
- How will the CFPB fit into the existing regulatory and enforcement paradigm?
- The expanded role of state AGs and coordination with the CFPB in relation to the residential mortgage industry
- Assessing the ongoing impact of Dodd-Frank on residential mortgage litigation
 - What to expect moving forward
- Evaluating preemption in the wake of Dodd-Frank
- Attorney-client privilege and the CFPB
 - Where does this stand?


The CFPB and 'Unfair, Deceptive, or Abusive Acts and Practices' (UDAAPs)


- What practices will the CFPB target first?
- Assessing the definition of 'abusive' practices
 - Potential pitfalls for lenders and servicers
 - What types of products or aspects of origination and servicing may be 'abusive'?
- Evaluating written guidance on the issue
- The risk of retroactive application

3:15 Networking and Refreshment Break

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3:30 The Borrower's Perspective: Insights From the Plaintiffs' Bar and Consumer Advocates

 *Amanda L. Lundergan*
Ice Legal, P.A.

 *Peter Romer-Friedman*
Cohen Milstein Sellers & Toll PLLC

Moderator:

 *E. Hutchinson Robbins, Jr.*
Miles & Stockbridge P.C.


In this session, you will hear from leading plaintiffs' attorneys and consumer advocates on claims trends, foreclosure litigation, where cases are headed in the coming months, and how lenders and servicers can work with borrowers to minimize the need for litigation. You will obtain key insights into the types of actions plaintiffs' counsel are focusing on and how to prepare for and respond to new and innovative claims, as well as how consumer advocates view the current residential mortgage landscape. Highlights of this session will include:

- How borrowers' counsel are approaching litigation arising from alleged foreclosure documentation errors
- Emerging theories of liability
- How the plaintiffs' bar is continuing to adapt to CAFA, as well as certification challenges in the wake of *Wal-Mart v. Dukes* and *AT&T Mobility v. Concepcion*
- Consumer advocate perspectives on MERS
 - Long term viability of MERS
- How the industry can best work with borrowers to pursue loan modifications and avoid foreclosures and litigation

4:25 Loan Servicing: Complying with New and Emerging Regulations, Employing Best Practices, Defending Against Borrower Claims, and Implementing Effective Loss Mitigation Strategies

Jan A. Zemanek
General Counsel
Kondaur Capital Corporation

 *Anthony J. Laura*
Patton Boggs LLP

 *Katrina Christakis*
Grady Pilgrim Christakis Bell LLP

A. Michelle Canter
LotsteinLegal PLLC

- Assessing the impact of the AG settlement and the CFPB on servicing standards
 - Enforcement issues
 - Ensuring compliance
- Defending against claims relating to loan servicing
 - Debt collection practices claims
 - Credit reporting claims
 - Escrow issues
 - RESPA issues
- Class action issues arising from loan servicing
- Servicer liability for lack of disclosure
 - Viability of good faith defense
 - Sufficient evidence to show adequate disclosure
 - Conducting due diligence of servicing compliance
- Loss mitigation programs
- Loan modifications
 - Borrower claims
 - Effective defenses

5:40 Conference Adjourns

Day Two: Friday, September 28, 2012

7:30 Continental Breakfast

8:00 **Views from the Bench: Judicial Perspectives on the Latest Plaintiff Theories, Emerging Defense Strategies, Foreclosure Mediation, Heightened Scrutiny of Lenders and Servicers, Loan Modification Litigation, Foreclosure Documentation Errors, Bankruptcy Litigation, Case Management, E-Discovery, and More**



Hon. Cecelia G. Morris
U.S. Bankr. Ct., S.D.N.Y.



Hon. Michael J. Watanabe
U.S. Dist. Ct., D. Col.



Hon. Michael B. Kaplan
U.S. Bankr. Ct., D.N.J.



Hon. Richard S. Schmidt
U.S. Bankr. Ct., S.D. Tex.



Hon. Annette Rizzo
Phila. Ct. Com. Pl.

Moderator:



Hunter R. Eley
Doll Amir & Eley LLP

- Judicial perspectives on foreclosure documentation errors and 'robo-signing' practices
- Impact of court-implemented rules
 - Attorney affidavits
 - File reviews
 - Enhanced pleading requirements
- Insights on new measures lenders and servicers must implement to mitigate future liability
- New and emerging plaintiff theories and defense strategies
- Loan modification litigation
- Navigating through bankruptcy court - what lenders and servicers need to know
- Discretionary awards of attorneys' fees
- Determining when sanctions are appropriate
- Insights on foreclosure mediation programs
 - How effective are these programs?
 - How to maximize the benefits of foreclosure mediation
- Novel approaches to trial and case management
 - Pre-trial procedures
- Judicial perspectives on e-discovery
 - What are the expectations of counsel when dealing with a case involving voluminous discovery requests?

9:30 Morning Coffee Break

9:40 **Regulatory and Enforcement Roundtable: The View from Federal and State Agencies and Attorneys General on New and Emerging Initiatives**

Michael G. Salemi
Enforcement Attorney
Consumer Financial Protection Bureau

Deanya T. Kueckelhan
Southwest Regional Director
Federal Trade Commission

Thomas P. James
Consumer Counsel, Consumer Fraud Bureau
Office of the Illinois Attorney General

Amber Anderson Villa
Assistant Attorney General, Consumer Protection Division
Office of the Massachusetts Attorney General

John Prendergast
Vice President of Non-Depository Supervision
Conference of State Bank Supervisors

Susan Ellis
Assistant Bureau Chief, Consumer Fraud
Office of the Illinois Attorney General

Moderator:



Frank A. Hirsch
Alston & Bird LLP

- Perspectives on the AG settlement and its implications for the broader mortgage servicing industry
 - Likelihood of national servicing standards arising from the settlement
 - Issues relating to enforcement of the settlement terms
- Assessing CFPB initiatives relating to mortgage servicing standards
- Impact of the CFPB on state enforcement initiatives
- Mortgage origination standards
- CFPB examinations
- Increasing focus on fair lending concerns
- Ensuring compliance with UDAP laws in light of enhanced enforcement initiatives
- Force-placed insurance
- Assessing the multi-state mortgage examination process
- Cooperating with investigations
- Reaching consent settlements with regulators
- Implementing lessons learned from past enforcement actions

11:10 **Fair Lending: Managing and Defending Against Claims of Discriminatory Lending and Assessing the Status of 'Disparate Impact' in Lending Litigation and Enforcement**



Christopher T. Shaheen
Vice President and Chief Litigation Counsel
U.S. Bank



Jay N. Fastow
Dickstein Shapiro LLP



Eric Jon Taylor
Parker, Hudson, Rainer & Dobbs LLP



Michael J. Agolia
Morrison & Foerster LLP

- Recent cases and enforcement actions
- How state and federal agencies are approaching fair lending issues
- Assessing the status of 'disparate impact' in lending litigation and enforcement

- New and emerging allegations of discriminatory practices relating to upkeep of bank-owned houses in minority neighborhoods
- Assessing the evolving definition of and uncertainty relating to fair lending
- Impact of the CFPB on fair lending litigation
 - CFPB initiatives and enforcement efforts relating to discriminatory lending and 'disparate impact'
- Defending against the latest claims alleging fair lending violations
 - Early interviews and information gathering
 - Data analysis
- Impact of recent regulatory and litigation developments on the defense of predatory lending claims
- Public relations concerns
- Settlement considerations and strategies

12:25 **Networking Luncheon for Speakers and Attendees**

FORECLOSURE LITIGATION

1:30 **Best Practices for Ensuring Compliance with New Document and Affidavit Procedures**

Jason H. Miller
General Counsel
Select Portfolio Servicing, Inc.



Sanjay P. Ibrahim
Parker Ibrahim & Berg LLC



Therese G. Franzén
Franzén and Salzano, P.C.



Robert T. Mowrey
Locke Lord LLP

- Essential documents required for foreclosure cases
 - When is the original loan documentation necessary?
 - Issues involving possession, note, and assignment
- Refuting claims of documentation error
- New challenges to proving the validity of an endorsement
- Best practices and lessons learned from prior foreclosure documentation errors
 - Execution and notarization; standardization of forms
- Auditing completed foreclosures and conducting foreclosure look-backs
- Attorney fees and related foreclosure filings; ensuring compliance with local fee caps

2:30 **Establishing Standing and Defending Against Claims Relating to MERS**



Joseph J. Patry
Counsel
MERSCORP Holdings, Inc.



John R. Chiles
Burr & Forman LLP



J. Garth Fennegan
SettlePou



Michael D. Ferachi
McGlinchey Stafford PLLC

- Assessing borrower attacks on standing
 - New and emerging claims

- How to combat and defeat standing attacks
- Update on MERS litigation
 - Borrower claims
 - *Qui tam* cases
 - County recorder/AG litigation
- MERS interest as mortgagee or beneficiary
- Transfer of notes via endorsement and delivery rather than assignment
- Assignment of mortgages

3:30 **Afternoon Refreshment Break**

3:40 **Overcoming Contested Foreclosures and Responding to Borrower Counterclaims and Stall Tactics**

Janna Lewis
Executive Vice President & General Counsel
Fay Financial / Fay Servicing



Christy A. Ames
Stites & Harbison, PLLC



Roland P. Reynolds
Palmer, Lombardi & Donohue LLP



Michele L. Stocker
Greenberg Traurig, LLP

- Handling borrower counterclaims in contested foreclosures
- Overcoming commonly raised defenses including TILA, SCRA, fraud, and rescission claims
- Preventing bankruptcy from becoming a tool used by borrowers to stall foreclosures
- Loss mitigation
- Litigation challenges relating to mortgage origination
- Loan modifications and foreclosure
 - Defending against counterclaims arising from loan modifications and HAMP
- Foreclosure mediation programs
- Responding to challenges to foreclosures in non-judicial foreclosure states

4:40 **Mortgages in Bankruptcy: Prevailing Against the Latest Bankruptcy Litigation Claims**



David M. Bizar
Seyfarth Shaw LLP



Debra Lee Hovatter
Spilman Thomas & Battle, PLLC

- Litigating in bankruptcy court
 - Defending against borrower claims
- Class action issues
- Foreclosure litigation standards in bankruptcy court
- Affidavit issues
- Recent bankruptcy class certification decisions
- Latest cases regarding ownership of a debt/note
- Proof of claim issues and litigation update
- Stay relief and avoiding stay violations
- Stern v. Marshall
 - Assessing the scope of bankruptcy court jurisdiction
- United Student Aid Funds, Inc. v. Espinosa
 - Evaluating the relevance of this holding to the mortgage industry

5:30 **Conference Ends**

Pre-Conference Litigation Master Class (separate registration required)

Thursday, September 27, 2012
8:30 a.m. – 11:00 a.m.

Managing and Defending Against Class Actions: What Defense Counsel Must Know In Order to Avoid Class Certifications, Prevail Against New and Emerging Plaintiff Strategies, Assess the Latest Filings, and Obtain Favorable Settlements



Joe Salama
Director, Senior Counsel
Litigation and Regulatory Investigations
Deutsche Bank AG, New York



Thomas M. Hefferon
Goodwin Procter LLP



Eric Jon Taylor
Parker, Hudson, Rainer & Dobbs LLP

To defend against the latest influx of claims, it is critical that you have a clear and detailed understanding of where plaintiffs are filing and why, which defense strategies are having the most success, how to best utilize multiple sources of data to strengthen your defense, and how to obtain favorable settlements. Participants in this Master Class will obtain expert insights and proven strategies for how to successfully manage and defend against the new wave of claims and class actions, including:

- Class action trends involving residential mortgage litigation, and what to expect going forward
 - Loan modification litigation
 - Force-placed insurance litigation
- Defending against the influx of cases being brought by plaintiffs' attorneys and state AGs
 - New and emerging plaintiff strategies
- Where plaintiffs are filing and why
 - Using this information to structure your case
- Impact of *Wal-Mart v. Dukes* on class certifications
 - How are the lower courts applying *Wal-Mart*?
 - Defeating plaintiffs' theories as to why *Wal-Mart* should not apply to a particular case
- Using expert testimony and data to make a direct challenge to a class certification
- How the lower courts are applying *AT&T Mobility v. Concepcion*
 - Differing applications
 - Defeating plaintiffs' theories as to why *Concepcion* should not apply to a particular case
- Dealing with successor liability
 - Multiple owners or managers
- Managing and defending against duplicative claims
- Using data and analytics to make your case
- Ensuring that technology is usable and reliable at trial
- Settlement considerations
 - Making the decision to settle
 - Ensuring effective client communication during the settlement process
- Best practices for ensuring that settlements remain settled
 - Creating a comprehensive settlement order
 - Litigating the release

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RESIDENTIAL MORTGAGE

LITIGATION & REGULATORY ENFORCEMENT

Expert strategies for in-house and outside defense counsel on navigating litigation hurdles and preparing for new and emerging government enforcement initiatives

September 27 – 28, 2012 | The Adolphus | Dallas, TX

Hear from 12 senior in-house counsel, 6 federal and state regulatory and enforcement officials, and 5 renowned federal and state judges, as well as leading outside counsel from around the nation

Plus, don't miss the exclusive pre-conference Litigation Master Class:

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