

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

# RESIDENTIAL MORTGAGE LITIGATION & REGULATORY ENFORCEMENT

Preparing for the New Generation of Claims, Regulations & Legislative Developments

**Government faculty includes:**

Joseph Samarias  
U.S. Department of the Treasury

John A. Davidovich      Chuck Cross  
FDIC                              CSBS

Reid Muoio                      John Prendergast  
SEC                                CSBS

Chris Barry-Smith  
Office of the MA Attorney General

Thomas P. James  
Office of the IL Attorney General

**Network With:**

Gene R. Clark                      Alan J. Levith  
Arch Bay Capital                      LOGS Network

Karyn A. Caldwell                      C. Vance Beck  
Flagstar Bank, FSB                      Wells Fargo

Joseph J. Patry                      Leah S. Getlan  
MERSCORP, Inc.                      Capital One

Stephanie Karfias                      Chante Bowser  
SunTrust Banks, Inc.                      Freddie Mac

Christopher T. Shaheen                      Gary A. Deutsch  
U.S. Bank                                      PNC Bank, N.A.

Anthony Del Piano                      David Cherneck  
HSBC North America                      Prospect Mortgage

David K. Stein                      Janna Lewis  
Residential Finance Corp.                      Fay Servicing

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March 29 – 30, 2012 | The Hamilton Crowne Plaza | Washington, DC

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U.S. Dist. Ct., E.D. Pa.



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U.S. Dist. Ct., N.D. Tex.



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U.S. Bankr. Ct., M.D. Fla.

**Featuring key insights and expert advice for:**

- Preparing for and responding to the continued regulatory focus and expanding Federal and State enforcement actions
- Navigating the foreclosure litigation process including: Standing, borrower counterclaims, contested foreclosures, MERS issues, and foreclosure avoidance programs
- Examining the new powers of the CFPB, their interaction with state regulators and ensuring compliance with new regulations
- A look at the latest investor claims and regulatory initiatives in capital markets litigation
- Defending against claims of fair lending violations, including TILA and SCRA
- Mitigating loss in loan servicing and responding to HAMP & MERS allegations
- Prevailing against the latest bankruptcy litigation claims
- Defending against class actions and avoiding class treatment

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**A** Residential Mortgage Litigation Focus on the Hotbed of California

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# FEATURING MORE IN-HOUSE COUNSEL, JUDGES & REGULATORS THAN EVER BEFORE!

Join top litigators, in-house counsel, key federal and state regulators, and renowned jurists to ensure you are fully prepared to defend against the continuing deluge of residential mortgage claims.

**W**ith a renewed regulatory focus stemming from the implementation of the CFPB, residential mortgage litigation is more prominent than ever. The authority of the state Attorneys General continues to expand to enforce the new regulations, and it is critical that both in-house and outside counsel remain up-to-date on emerging borrower and investor claims as well as ongoing state and federal investigations. Defending against fair lending claims under TILA and SCRA, mitigating loss in loan servicing and responding to allegations of HAMP and MERS violations, and attacking the latest bankruptcy claims are all key.

In response, **American Conference Institute** is pleased to announce its **8th National Forum on Residential Mortgage Litigation & Regulatory Enforcement**. Our unparalleled faculty of regulatory and enforcement officials, renowned jurists, expert in-house counsel, and leading outside counsel will provide you insights and strategies tailored to defend against new claims and adapt to the evolving regulatory landscape. Topics will include:

- Adapting to evolving state and federal regulatory initiatives in light of new regulations under the CFPB
- A look at the latest investor claims and regulatory initiatives in capital markets litigation
- Legal and compliance strategies for preventing and defending against TILA and SCRA claims
- Responding to allegations of HAMP and MERS violations and minimizing risk through proper procedures and loss mitigation strategies
- Navigating the foreclosure litigation process and foreclosure mediation programs, including standing and compliance issues, proof of MERS assignments, and refuting claims of loan documentation error
- Combating the use of bankruptcy as a borrower tool
- Prevailing against the latest bankruptcy litigation claims
- Managing and defending against residential mortgage class actions

Plus, register for the Pre-Conference In-Depth Focus Sessions

A | Residential Mortgage Litigation Focus on the Hotbed of California

B | Defending and Managing Claims/Class Actions in an Unrivaled Litigious Environment

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  - Mortgage Lenders
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  - Loan Servicers
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7:20 **Registration and Continental Breakfast**

8:00 **Co-Chairs' Welcoming Remarks**



*Andrew K. Stutzman*  
Chair, Mortgage and Lending Litigation Practice Group  
Stradley Ronon Stevens & Young, LLP



*Frank Hirsch*  
Partner  
Alston & Bird LLP

8:05 **In-House Counsel Speak Out: What They Are Doing to Prevent and Manage Mortgage Litigation Involving Lending, Servicing & Foreclosure**

Panel 1 | 8:05 – 9:05

*Gene R. Clark*  
General Counsel  
Arch Bay Capital, LLC

*C. Vance Beck*  
Associate General Counsel  
Wells Fargo

*Stephanie Karfias*  
First Vice President & Assistant General Counsel  
SunTrust Banks, Inc.

*Gary A. Deutsch*  
Senior Counsel  
PNC Bank, N.A.

*David K. Stein*  
Senior Vice President & General Counsel  
Residential Finance Corporation

*Janna Lewis*  
EVP and General Counsel  
Fay Servicing

Panel 1 Moderator:

*Gregory S. Korman*  
Partner  
Katten Muchin Rosenman LLP

Panel 2 | 9:05 – 10:05

*Anthony Del Piano*  
Vice President, Associate General Counsel & Corporate Secretary  
HSBC North America

*Alan J. Levith*  
Associate General Counsel  
LOGS Network

*David Chernek*  
Senior Vice President, Associate General Counsel  
Prospect Mortgage

*Eric Spett*  
SVP and Associate General Counsel  
American Home Mortgage Servicing, Inc.

*Chante Bowser*  
Associate General Counsel  
Freddie Mac

*Leah S. Getlan*  
Director and Assistant General Counsel  
Capital One

*Michael Schulte*  
Assistant General Counsel  
Springleaf Financial Services

Panel 2 Moderator:

*Thomas M. Hefferon*  
Partner  
Goodwin Procter LLP

- Ensuring proper foreclosure procedures both internally and externally
- Managing the flood of residential mortgage litigation arising from alleged foreclosure documentation errors and “robo-signing” practices
- Avoiding claims of predatory lending or RESPA or TILA violations
  - Implementing training and compliance controls
  - Resolving disputes before borrowers or investors file suit
- Determining when to settle a claim and when to continue to defend against it
- Working with outside counsel
  - Achieving efficient and cost effective coordination of responsibilities
  - In-house pet peeves and concerns
- Dos and Don'ts when working with in-house counsel

10:05 **Morning Coffee Break**

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## 10:15 Complying with and Responding to New and Emerging Federal and State Enforcement Actions

*Joseph Samarias*  
Senior Counsel  
U.S. Department of the Treasury

*Reid Muoio*  
Deputy Chief, Structured and New Products Unit  
Securities and Exchange Commission

*John A. Davidovich*  
Counsel to the Inspector General  
Federal Deposit Insurance Corporation

*Chris Barry-Smith*  
Chief, Public Protection and Advocacy Bureau  
Office of the Mass. Attorney General Martha Coakley

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

*Chuck Cross*  
Vice President of Mortgage Regulatory Policy  
Conference of State Bank Supervisors

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

Moderator:  
*Andrew Sandler*  
Partner  
Buckley Sandler LLP

### Legislative initiatives on a state and federal level

- DOJ initiatives
  - Preparing for an increase in DOJ and FTC enforcement
    - Investigations and enforcement for predatory lending
    - Focus on the TCPA and TILA and increase in consumer protection laws
    - DOJ's focus on discrimination claims
  - Adapting and defending under the DOJ's increased focus on investigation
- Complying with federal and state investigations and inquiries into foreclosure practices
  - What to expect and how to prepare
  - What are states and AGs doing to act parallel to the federal government on mortgage servicing and foreclosure look-back
- State/Federal discrepancies
  - Independent state consumer protection laws and lack of preemption
  - Debt collection

### Emerging Federal Cases

- Case wrap up and important litigation over the past year
- Servicer foreclosure settlement: An in depth look at the current status of the Office of Comptroller of the Currency (OCC) Consent Order

### How external factors are shaping the residential mortgage market

- Political influences on the regulatory movement
  - Most recent issues and developments
  - Changes in the economy, elections, corporate downsizing
- Looking to the future
  - Possible effects on the industry when interest rates are no longer suppressed
  - What will the market be able to bear
  - How will uncertainty affect pricing in the residential mortgage market

### Multi-State Mortgage Examination Process

- Overview of increase in joint state examinations
  - Complying with data requests for the multi-state examination process
- Understanding and responding to increased requests for information
- Preparing for the possibility of resulting state enforcement actions

## 11:45 The Evolving Regulatory Landscape: Repercussions of Dodd-Frank and Adapting to the New Authority from the CFPB

*Kenneth W. Edwards*                      *Glenn S. Arden*  
Policy Counsel                              Partner  
Center for Responsible Lending        Jones Day

*Anand S. Raman*  
Partner  
Skadden, Arps, Slate, Meagher & Flom LLP

*Andrew K. Stutzman*  
Chair, Mortgage and Lending Litigation Practice Group  
Stradley Ronon Stevens & Young, LLP

### Moderator

*Anthony Rollo*  
Member  
McGlinchey Stafford PLLC

- Continued impact of Dodd-Frank on residential mortgage litigation
  - What to expect moving forward
  - Preparing and responding to enforcement efforts
- Assessing the CFPB and its impact on the industry
  - Overlap and concurrent jurisdiction and power with the FHA
  - Impact of the CFPB on state enforcement initiatives
  - Overview of what to expect in the coming months from the CFPB

## 1:00 Networking Luncheon for Speakers and Delegates

## 2:15 Loan Servicing: Complying with the Multitude of Regulations and Minimizing Risk through Proper Procedures and Loss Mitigation Strategies in Litigation

*Leah S. Getlan*  
Director and Assistant General Counsel  
Capital One

*E. Hutchinson Robbins, Jr.*              *Sanjay P. Ibrahim*  
Principal                                      Partner  
Miles & Stockbridge, P.C.              Parker Ibrahim & Berg LLC

*Richard J. Andreano, Jr.*                *Robert T. Mowrey*  
Partner                                        Partner  
Patton Boggs LLP                        Lock Lord LLP

- Regulatory compliance in a new era of CFPB
  - Specific servicing rulemaking process commenced by FTC and transferred to CFPB
  - General Dodd-Frank prohibition against unfair, deceptive or abusive acts or practices, and substantial assistance prohibition
    - Unfair, deceptive or abusive acts or practices authority of the CFPB
- Avoiding and defending against claims of TILA and RESPA violations
  - QWR procedures
  - Payment processing, escrow, and ARM adjustments
  - Fee practices
- Servicer liability for lack of disclosure
  - Viability of good faith defense
  - Evidence required to show adequate disclosure

- Conducting due diligence of servicing compliance
- Loss mitigation and state mandated mediation to reduce litigation
  - Loss mitigation during the foreclosure process
- Remediation plans
- Loan modification: Issues and defenses
  - Breach of contract theories relating to loan modifications
  - Defending against causes of action arising under HAMP
  - Defending against claims that borrowers were given modifications against their will
- Managing and defending against claims involving “robo-signing” practices and documentation errors
- Claims relating to MERS
  - Assessing the current and future viability of MERS
  - Long term impact on servicers and title companies

- Trustee put-back claims
- Recent investor lawsuits and claims
  - Assessing investor claims regarding loan modifications
  - Establishing effective defenses to investor claims

## 6:00 Conference Adjourns

Cocktail Reception Sponsored by: **ALSTON + BIRD LLP**

## Day Two – Friday, March 30, 2012

### 7:30 Continental Breakfast

### 8:00 View From the Bench: Judicial Perspectives on Foreclosure Documentation Errors, Loan Modification Litigation, Affidavit and Pleading Requirements, Third Party Beneficiary Claims, Discretionary Awards of Fees and Sanctions, and Navigating through Bankruptcy Court

*The Honorable Jane J. Boyle*  
District Court Judge  
United States District Court, Northern District of Texas

*The Honorable Helen Gillmor*  
District Court Judge  
United States District Court, District of Hawaii

*The Honorable Robert J. Johnston*  
Magistrate Judge  
United States District Court, District of Nevada

*The Honorable Paul M. Warner*  
Magistrate Judge  
United States District Court, District of Utah

*The Honorable Alan S. Trust*  
Bankruptcy Judge  
United States Bankruptcy Court, Eastern District of New York

*The Honorable Michael McManus*  
Bankruptcy Judge  
United States Bankruptcy Court, Eastern District of California

*The Honorable Michael G. Williamson*  
Bankruptcy Judge  
United States Bankruptcy Court, Middle District of Florida

#### Moderator:

*Hunter Eley*  
Partner  
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 into discretionary awards of attorneys’ fees and sanctions
- A look at the mediation process and its merits for residential foreclosure cases
- Judicial tips on pleading and proving damages
  - Proper documentation
  - How much detail is needed in a complaint
- Navigating bankruptcy court
  - Common valuation issues of assets in bankruptcy
  - What lenders and servicers need to know

### 3:30 Afternoon Coffee Break

### 3:45 Defeating Discriminatory/Predatory Lending Claims, Including TILA, SCRA and HAMP: Best Defenses and Settlement Techniques

*Sharon Kelly*  
Managing Director  
ERS Group

*David M. Bizar*  
Partner  
Seyfarth Shaw LLP

*Eric Jon Taylor*  
Partner  
Parker, Hudson, Rainer  
& Dobbs LLP

*Michael J. Agolia*  
Partner  
Morrison & Foerester LLP

- Defending against the most recent claims alleging fair lending violations, including:
  - TILA
  - SCRA
- What constitutes proper disclosure notices and enforceable modification contract under HAMP
- The effect of recent regulatory and litigation developments on the defense of predatory lending claims
  - Lessons learned from recent SCRA cases and enforcement actions
- Determining when to settle a claim and when to defend against it
- Avoiding predatory lending claims: proactive steps to prevent future claims
  - Conducting internal compliance assessment and training
  - Resolving disputes before borrowers file suit

### 5:00 Capital Markets Litigation: The Latest Claims & Emerging Regulatory Initiatives Involving Trustees, Investors, Insurers and Repurchasers

*Richik Sarkar*  
Partner  
Ulmer & Berne LLP

*Talcott J. Franklin*  
Attorney  
Talcott Franklin P.C.

- Implementing policies and procedures to ensure compliance with new and emerging regulations
  - Regulatory response to RMBS cases
  - Regulatory oversight and involvement in consent orders
- Defending against claims arising from mortgage backed securities and derivative products
  - Inadequate disclosure
  - Misrepresentation
  - Breach of representations and warranties/faulty origination and underwriting
  - Loan servicer misconduct
- Trustees’ suits to “audit” loan files to determine if RMBS contracts have been breached
- Analysis and strategies to address buyback and repurchase litigation
  - Investor put-back claims

### 9:35 Morning Coffee Break

9:45 **Judicial Foreclosure Intervention: How to Effectively Navigate Foreclosure Mediation Programs**

*The Honorable C. Darnell Jones*  
District Court Judge  
United States District Court, Eastern District of Pennsylvania

*The Honorable Kevin S.C. Chang*  
Magistrate Judge  
United State District Court, District of Hawaii

Moderator:

*Richard E. Gottlieb*  
Member and Director, Financial Industry Group  
Dykema Gossett PLLC

- Preventative means to address overburdened courts
  - Mediation programs
  - Programs requiring good faith efforts by the lender to look at all options to avoid foreclosure
- Foreclosure prevention programs across the country
  - Nevada, California, Hawaii, and Philadelphia programs
- Mediation programs
  - Enforceability of mandatory arbitration clauses
  - Recent developments regarding mandatory mediation programs
- Federal and state court opinions on foreclosure prevention
  - 2010 CA Superior Court *Mabry v. Superior Court* decision

## FORECLOSURE LITIGATION

10:30 **Establishing Standing and Ensuring Compliance with New Document and Affidavit Procedures**

*Nina F. Simon*  
Director of Litigation  
Center for Responsible Lending

*Therese G. Franzen*  
Partner  
Franzen & Salzano, P.C.

*Bryan A. Fratkin*  
Partner  
McGuireWoods LLP

- Evolution of a borrower attacks on standing
  - New claims and standing attacks brought by borrowers
  - How to combat and defeat standing attacks
- Specific Documents defense attorneys need to prove a foreclosure case
  - When is the original loan documentation necessary
  - Issues involving possession, note, and assignment
- New challenges to proving the validity of an endorsement
- Best practices and lessons learned from foreclosure documentation errors
- Attorney's fees and related foreclosure filings; ensuring compliance with local fee caps
- Responding to challenges to foreclosures in non-judicial foreclosure states

11:15 **Responding to Borrower Counterclaims and Stall Tactics and Defending Against MERS Claims**

*Joseph J. Patry*  
Counsel  
MERSCORP, Inc.

*Alan M. Warfield*  
Partner  
Jones Walker, LLP

*Roland P. Reynolds*  
Partner  
Palmer, Lombardi & Donohue LLP

- Defenses to foreclosure actions
- Managing counterclaims arising from common law and statutes including:
  - TILA
  - RESPA
  - FDCPA
  - UDAP

- MERS
  - MERS interest as mortgagee or beneficiary
  - Transfer of notes via endorsement and delivery rather than assignment
- Assignment of mortgages
- Refuting Claims of documentation error
  - When is the original loan documentation necessary
- How to combat discovery claims and attacks on endorsement validity and prevent a fishing expedition
- Preventing bankruptcy claims from being used as a borrower tool

12:00 **Strategies to Overcome Claims and Objections in Contested Foreclosures**

*Michelle A. Canter*  
Managing Partner, Atlanta  
Lotstein Legal PLLC

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

*Michele Stocker*  
Shareholder and Chair, Financial Services Litigation  
Greenberg Traurig LLP

- Handling borrower counterclaims in contested foreclosures
- Overcoming commonly raised defenses including TILA, SCRA, and fraud and rescission claims
- Foreclosures while borrowers are dealing with HAMP modification
- Origination Claims

12:45 **Networking Luncheon for Speakers and Delegates**

1:45 **Mortgages in Bankruptcy: Prevailing Against the Latest Bankruptcy Litigation Claims**

*The Honorable Elizabeth W. Magner*  
Bankruptcy Judge  
United States Bankruptcy Court,  
Eastern District of Louisiana

*Katrina Christakis*  
Partner  
Grady Pilgrim Christakis Bell LLP

*John R. Chiles*  
Partner  
Burr & Forman LLP

*Debra Lee Hovatter*  
Member  
Spilman Thomas & Battle, PLLC

*Scott Borison*  
Partner  
Legg Law Firm LLC

- Foreclosure litigation standards in bankruptcy court
- Navigating bankruptcy court
  - Defending against borrower claims in bankruptcy court
  - Common valuation issues of assets in bankruptcy
  - What lenders and servicers need to know
- Recent bankruptcy class certification decisions
- Latest cases regarding ownership of a debt/note
- Stay relief and avoiding stay violations
- Proof of Claim issues and litigation update

3:00 **A Focus on Class Actions: Avoiding Class Treatment and Prevailing Against the Latest Plaintiffs' Class Claims**

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

*Jay Fastow*  
Partner  
Dickstein Shapiro LLP

*Frank A. Hirsch*  
Partner  
Alston & Bird LLP

*Robert E. Boone*  
Partner  
Bryan Cave LLP

- Effectively defending against class claims arising in relation to:
  - Consumer Protection laws
    - Class claims under the TCPA
    - Loan Modification and HAMP
      - Providing evidence of proper modification
  - Foreclosure documentation errors
- Continued impact of Concepcion
  - The status of class action waiver clauses in arbitration agreements after Concepcion

- Drafting an arbitration provision to be effective in avoiding class treatment
- Removal under the Class Action Fairness Act
- Mass actions developments
- Recent issues in class notice and settlement structures
- Class action trends involving residential mortgage litigation, and what to expect going forward

4:15 **Conference Ends**

## Pre-Conference In-Depth Focus Sessions

**A** Wednesday, March 28, 2012 | 2:00-4:00

### Residential Mortgage Litigation Focus on the Hotbed of California

*Hunter Eley*  
Partner  
Doll Amir & Eley LLP

*Gregory S. Korman*  
Partner  
Katten Muchin Rosenman LLP

*Roland P. Reynolds*  
Partner  
Palmer, Lombardi & Donohue LLP

In regard to residential mortgage litigation, California has been a unique and prominent player. The rise of borrower initiated litigation in California courts is unprecedented, and the systemic problems in the California court system create serious roadblocks for attorneys to effectively resolve cases. One size might not fit all as it relates to residential mortgage litigation strategies in California, and it is imperative that companies with a California presence and their counsel ensure that they know how to navigate residential mortgage litigation challenges specific to this state. In this workshop, participants will receive in-depth and California specific insights on:

- The rise of borrower initiated litigation in California
  - Evolving types of claims
- New cases under the False Claims Act
- Systemic problems: time delays and understaffing in the California court system
- Foreclosure avoidance programs
  - State mandated foreclosure avoidance programs
  - Requirements that good faith attempts be made by lenders to look at options to prevent foreclosure
  - Recent decisions involving foreclosure prevention, including *Mabry v. Superior Court*
- Judge initiated foreclosure prevention programs
  - Orange County foreclosure avoidance program
- New legislation and appellate court decisions
- California Attorney General Mortgage Fraud Strike Force

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**B** Wednesday, March 28, 2012 | 4:00-6:00

### Defending and Managing Claims/Class Actions in an Unrivaled Litigious Environment: The Latest Filings, Litigation Strategies and Techniques That Are Working and Why, Utilizing Multiple Sources of Data in Your Defense, and Ensuring Your Case Stays Settled

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

*Bryan A. Fratkin*  
Partner  
McGuireWoods LLP

*Eric Jon Taylor*  
Partner  
Parker, Hudson, Rainer & Dobbs LLP

*Jason Pinson*  
Principal  
Ursas Law Group

*Lawrence Buckley*  
Executive Vice President  
National Bankruptcy Services

*Brendan Keene*  
Senior Vice President  
CoreLogic

To defend against the latest influx of claims, it is critical to have a clear and detailed understanding of where plaintiffs are filing, know litigation strategies and techniques that are working and why, utilize multiple sources of data to defend against any type of claim that may arise, and understand the best practices to ensure that cases stay settled. Get the latest insights and strategies to successfully manage and defend the new wave of claims and class actions, including:

#### Litigation Strategy

- Defending against the influx of cases brought by state AGs
  - why one attorney is successful where another isn't
- Where plaintiffs are filing and how to structure your case around this
- Dealing with successor liability
  - Bank failures, mergers, and acquisitions
  - Multiple owners or managers

#### Application of Data & Analytics in Mortgage Litigation

- Litigation strategies using data and analytics to make your case
  - The historical title database and recording documentation
- How to defend against plaintiffs' attorneys whether buying, selling, or making a loan
  - Securitization claims defense; Loan modification defense
- Navigating the new secondary residential mortgage market
  - Cultivating institutional trust
  - Consumer benefits
  - Restoring the RMBS market
- Ensuring technology is usable and reliable at trial

#### Settlement Negotiation

- Balancing efficiency and results with trying cases
- Ensuring client communication does not delay possible settlement options
- Strategies to help clients respond to duplicative claims in an era of litigious plaintiffs
- Sustainable verdict: how to settle cases so they stay settled
  - Creating a comprehensive settlement order
  - Litigating the release

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# RESIDENTIAL MORTGAGE LITIGATION & REGULATORY ENFORCEMENT

Preparing for the New Generation of Claims, Regulations & Legislative Developments

March 29 – 30, 2012 | The Hamilton Crowne Plaza | Washington, DC

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Corporation | HSBC North  
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One | MERSCORP | U.S. Bank  
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AHMSI

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I would like to receive CLE accreditation for the following states: \_\_\_\_\_ . See CLE details inside.

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