

32<sup>nd</sup> Advanced Forum on

# CON\$UMER FINANCE

## CLASS ACTIONS, LITIGATION & GOVERNMENT ENFORCEMENT ACTIONS

*Vital Intelligence for Managing Disputes in the COVID-19 Context and Beyond*

September 22–23, 2020 • Millennium Knickerbocker, Chicago, IL



### Gain Key Government Insights on Enforcement Priorities:

**Thomas P. James\***  
Assistant Attorney General  
**Illinois Attorney General's Office**  
(Chicago, IL)

**Glenn Kaplan**  
Chief, Insurance and Financial Services Division  
**Massachusetts Attorney General's Office**  
(Boston, MA)

**Andrew Smith**  
Director, Bureau of Consumer Protection  
**Federal Trade Commission** (Washington, DC)

**Hunter Wiggins**  
General Counsel  
**Illinois Department of Financial and  
Professional Regulation** (Springfield, IL)

### Distinguished In-House Faculty from Leading Consumer Lenders:

**Christy A. Ames**  
SVP, General Counsel  
**Republic Bank** (Louisville, KY)

**Frank R. Borchert**  
General Counsel  
**Marlette Funding, LLC** (Wilmington, DE)

**Jonathan Chester**  
Senior Associate General Counsel  
**Enova** (Chicago, IL)

**Gary Deutsch\***  
Managing Chief Counsel,  
Consumer Finance Litigation  
**PNC Bank** (Philadelphia, PA)

\*Tentative

**Meredith Fuchs**  
Senior Vice President, Chief Counsel,  
Enterprise Regulatory  
**Capital One** (McLean, VA)  
Former CFPB General Counsel  
and Deputy Director

**William S. Jue**  
Vice President and General Counsel  
**Harley-Davidson Financial Services, Inc.**  
(Chicago, IL)

**Timothy D. Patterson**  
VP, Associate General Counsel  
**Exeter Finance LLC** (Irving, TX)

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### 2020 Program Highlights: .....

- Litigating Disputes Relating to COVID-19 Government Relief Programs
- Mitigating Liability Under the FCRA and Credit Reporting Challenges in the Pandemic
- Student Loan Servicing Obstacles in the COVID-19 Context
- Navigating the Uptick in Enforcement by State Attorneys General
- Anticipating a Surge in Class Actions Under California's New Privacy Legislation



## Big Banks Brace for Coronavirus-Related Onslaught

– **Politico**, March 16, 2020

## AGs Turn Focus to Consumer Credit, Mortgages, Stimulus Checks

– **Bloomberg Law**, May 27, 2020

## Lawyers Are Looking at the Last Mortgage Collapse to Help Prepare for Coronavirus-Related Economic Crisis

– **Law.com**, May 28, 2020

Consumer lenders are facing unprecedented scrutiny from regulators and borrowers alike. From loan servicing challenges amid mass unemployment to credit reporting requirements under new government programs and a new wave of privacy-related class actions on the horizon, the world of consumer finance is evolving in important ways. Lenders in the student loan, auto finance, credit card, mortgage, and personal loan spaces are forced to meet new legislative and regulatory demands and defend against new litigation and enforcement actions.

### ACI's 32<sup>nd</sup> Annual Advanced Forum on Consumer Finance Class Actions, Litigation & Government Enforcement Actions

returns to Chicago to help you make sense of these sudden developments, understand how they will impact you or your clients, and successfully manage the surge of COVID-19-related disputes that is likely to arise.

#### Key program highlights include:

- Staying on top of key legislation and regulations affecting the industry
- What kind of state enforcement activity to expect
- How to prepare for disputes relating to fair lending, debt collection, and credit reporting

Hear from and connect with an outstanding line-up of speakers including regulatory bodies, in-house experts, and law firms experienced in defending lenders in major litigation, class actions, and enforcement actions.

We hope you will join us at the premier national consumer lending legal conference for an unparalleled learning experience. This is your opportunity to gather the timeliest industry intelligence and prepare for the imminent wave of disputes that is about to strike the industry.

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Managing Chief Counsel,  
Consumer Finance Litigation  
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**Scott M. Pearson**  
Partner  
**Manatt, Phelps & Phillips, LLP**  
(Los Angeles, CA)

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Assistant Attorney General  
**Illinois Attorney General's Office**  
(Chicago, IL)

**Glenn Kaplan**  
Chief, Insurance and  
Financial Services Division  
**Massachusetts Attorney**  
**General's Office (Boston, MA)**

**Andrew Smith**  
Director, Bureau of  
Consumer Protection  
**Federal Trade Commission**  
(Washington, DC)

**Hunter Wiggins**  
General Counsel  
**Illinois Department of Financial**  
**and Professional Regulation**  
(Springfield, IL)

### SPEAKERS:

**Thomas N. Abbott**  
Senior Attorney  
**Perkins Coie LLP**  
(San Francisco, CA)

**Christy A. Ames**  
SVP, General Counsel  
**Republic Bank (Louisville, KY)**

**Keith S. Anderson**  
Partner  
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**LLP (Birmingham, AL)**

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Co-Head, Consumer Financial  
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**Leonard Bernstein**  
Co-Chair, Financial Services  
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**Frank R. Borchert**  
General Counsel  
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Senior Associate General Counsel  
**Enova (Chicago, IL)**

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**Capital One (McLean, VA)**  
Former CFPB General Counsel  
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**Alston & Bird LLP**  
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Former CFPB Deputy Director

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VP, Associate General Counsel  
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**Andrew K. Stutzman**  
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**Darren M. Welch**  
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## 7:15 Registration Begins and Breakfast

8:15


### Opening Remarks from the Conference Co-Chairs

 Gary Deutsch, Managing Chief Counsel, Consumer Finance Litigation, **PNC Bank (Philadelphia, PA)\***

Scott M. Pearson, Partner, **Manatt, Phelps & Phillips, LLP** (Los Angeles, CA)

## 8:30 KEYNOTE PANEL

### State Enforcement in the Trump Era: How Novel Regulatory Bodies, Increasingly Militant Consumer Protection, and Renewed Scrutiny of Industry Practices Will Affect the Industry

 Thomas P. James, Assistant Attorney General, **Illinois Attorney General's Office (Chicago, IL)\***

Glenn Kaplan, Chief, Insurance and Financial Services Division, **Massachusetts Attorney General's Office (Boston, MA)**

Hunter Wiggins, General Counsel, **Illinois Department of Financial and Professional Regulation (Springfield, IL)**

MODERATOR: Jonathan B. Engel, Partner, **Davis Wright Tremaine LLP** (Washington, DC)

- Status update on new investigation and enforcement actions by state Attorneys General and regulatory agencies (including licensing entities with the power to revoke the licenses of those whose conduct they regulate) as well as coordinated multi-state activity in response to decreased federal activity
- Gain insight into enforcement efforts by "Mini-CFPBs" in New York, New Jersey, and Massachusetts over the past year and proposals to create a similar agency in California
- Hear directly from key agencies and prepare to engage in dialogue with them in an exclusive Q&A session

9:15

### How to Navigate the Uptick in State Enforcement: Best Practices for Financial Institutions in Examinations and Settlements

 Stephanie H. Jackman, Partner, **Ballard Spahr LLP (Atlanta, GA)**


Lauran Schultz, Managing Director, **Epiq (New York, NY)**

- Examine trends in the scope of examinations, types of actions, and remediation requirements and how you can adapt your compliance and litigation strategies accordingly
- Assess the probable further escalation of state enforcement against lenders in the COVID-19 context as consumers are increasingly unable to meet their obligations
- Analyze how potential conflict between state and federal regulation may play out in enforcement activity following the pandemic

## 10:00 Networking Refreshment Break

10:30

### How to Mitigate and Manage a New Wave of Litigation and Enforcement Following the Pandemic: In-House Perspectives

 Meredith Fuchs, Senior Vice President, Chief Counsel, Enterprise Regulatory, **Capital One (McLean, VA)** *Former CFPB General Counsel and Deputy Director*

William S. Jue, Vice President and General Counsel, **Harley-Davidson Financial Services, Inc. (Chicago, IL)**

- Learn how consumer finance providers are navigating lending and servicing challenges and related disputes amid unprecedented loss of employment and demand for credit
- Gain insight into new obstacles in-house counsel are facing in managing the fallout from the pandemic, best practices from successes in their response thus far, and their concerns for the months to come
- Identify class action and enforcement activity that may result from the current crisis and how leading financial institutions intend to manage the expected surge in disputes
- Explore the consequences of the crisis on lenders in specific sectors including automobile, credit card, mortgage, and student loans
- Anticipate disputes that are likely to arise among industry players as consumers default on loans

11:15

### Federal Regulatory State of the Union: What Lenders Need to Know About Continued Enforcement Activity and Trump's Policy Priorities

 Leonad Bernstein, Co-Chair, Financial Services Regulatory Team, **Holland & Knight LLP (Philadelphia, PA)**


Brian Johnson, Partner, **Alston & Bird LLP (Washington, DC)** *Former CFPB Deputy Director*

Allison Schoenthal, Head Consumer Finance Litigation Practice, **Hogan Lovells US LLP (New York, NY)**

- Stay up to date on regulatory and enforcement initiatives by federal agencies including the CFPB, FTC, OCC, FDIC, and DOJ over the past year and coordination among them
- Learn about the CFPB's continued engagement in consumer protection, including through enforcement actions against major banks – Citizens and Fifth Third
- Examine the CFPB's policy under the Trump administration against "regulation by enforcement," according to which regulatory bodies' supervisory guidance does not have the force of law
- Assess the implications of an executive order signed by the President in October 2019 governing agencies including the CFPB, which states that guidance alone is insufficient for imposing new standards of conduct
- Discuss developments in the case on the constitutionality of the CFPB currently before the Supreme Court

12:00 **FTC KEYNOTE**

## Developments in Consumer Privacy, Data Security, and UDAP Enforcement Against Financial Institutions

 Andrew Smith, Director, Bureau of Consumer Protection, Federal Trade Commission (Washington, DC)

12:30 **Networking Lunch**

1:45

## Anticipating Disputes Resulting from Government Relief Programs and Rethinking Litigation Strategies Post-COVID-19


 Allyson B. Baker, Co-Head, Consumer Financial Services Practice, Venable LLP (Washington, DC)

Marci V. Kawski, Partner, Husch Blackwell LLP (Madison, WI)

- Delve into the range of federal, state, and local government programs deferring collection activity and industry pushback to these limitations on financial institutions
- Anticipate a surge in litigation against borrowers as deferments expire and courts re-open following the pandemic
- Examine likely disputes between industry and government, as lenders contest the binding aspects of relief programs
- Assess the impact of debt collection challenges on servicers, trust holders, and lenders and probable disputes among these parties
- Analyze the implications of possible continued government-mandated deferment, abatement, or forgiveness of debt following the pandemic
- Hear directly from the plaintiff bar on the major types of disputes they expect to pursue going forward

2:30

## Residential Mortgage Litigation Forecast: Preparing for a Possible Foreclosure Crisis on the Horizon

 Thomas N. Abbott, Senior Attorney, Perkins Coie LLP (San Francisco, CA)

McGuire Boyd, Partner, Williams Mullen (Richmond, VA)

Michele L. Stocker, Co-Chair, Consumer Financial Services Litigation Practice, Greenberg Traurig, P.A. (Fort Lauderdale, FL)

- Examine trends in litigation over bankruptcy discharge violations, inadequate foreclosure notice, and insufficient loss mitigation pre- and amid COVID-19
- Engage in dialogue with industry leaders on how to navigate the greatest disruption to the housing market since the Great Recession
- Analyze the impact of payment deferment plans and forbearances and government-mandated suspension of foreclosures and evictions on the mortgage industry

- Anticipate a range of disputes between stakeholders – homeowners and servicers, servicers and trust holders, lenders and government – after the pandemic
- Assess whether a foreclosure crisis is likely to materialize as temporary deferments and suspensions expire, as well as additional measures the government may take to deter such a crisis

3:30 **Networking Refreshment Break**

3:45

## Dissecting Class Action Developments: New Theories Pursued under Major Legislation, Emerging Types of Disputes, and Growing Challenges in Settlement

 Robin Nunn, Partner, Dechert LLP (Washington, DC)

John G. Schmidt Jr. Partner, Phillips Lytle LLP (Buffalo, NY)

David Stein, Chair, Banking & Financial Services Group, Bricker & Eckler LLP (Columbus, OH)

- Hear about new arguments made by plaintiffs' lawyers in cases filed under the TCPA, the FCRA, the FDCPA and analogous state legislation
- Examine trends in class actions relating to false advertising, out-of-network ATM fees, overdraft fees, data breaches, and attorney fees
- Explore pre-emption challenges and recent case law developments under the *Class Action Fairness Act*
- Stay current on questions over whether uninjured persons should be class members, as well as questions over personal jurisdiction in cases where certain persons claiming injury do not reside in the state of the court
- Identify emerging challenges in class settlements, including procedural issues over how notice should be given to class members, objections by third parties, and courts remanding settlements with increasing frequency

5:00

## Closing Remarks, Conference Adjourns

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7:45 Breakfast

8:30


## Opening Remarks from the Conference Co-Chairs

 Gary Deutsch, Managing Chief Counsel, Consumer Finance Litigation, **PNC Bank (Philadelphia, PA)\***

Scott M. Pearson, Partner, **Manatt, Phelps & Phillips, LLP** (Los Angeles, CA)

8:45

## In-House Roundtable on Effective Litigation Management Strategies: How to Allocate Resources, Collaborate with Outside Counsel, and Adapt to New Legislative Demands

 Christy A. Ames, SVP, General Counsel, **Republic Bank** (Louisville, KY)


Jonathan Chester, Senior Associate General Counsel, **Enova (Chicago, IL)**

Timothy D. Patterson, VP, Associate General Counsel, **Exeter Finance LLC (Irving, TX)**

- Gather best practices on overcoming budgetary constraints and efficiently litigating a growing number of disputes
- Hear about key considerations in-house counsel make when retaining external counsel and what makes for a productive working relationship
- Share insights on mobilizing resources to tackle complex litigation challenges at a time of unprecedented economic and industry turmoil

9:45

## Student Loan Servicing Challenges in the COVID-19 Context and Beyond: Navigating New Constraints on Debt Collectors and Ensuring the Viability of the Industry

 Keith S. Anderson, Partner, **Bradley Arant Boult Cummings LLP** (Birmingham, AL)

Vaishali S. Rao, Partner, **Hinshaw & Culbertson LLP (Chicago, IL)**

Paul H. Schieber, Shareholder, **Stevens & Lee P.C.** (Valley Forge, PA)

- Stay up to date on student loan-related class actions and enforcement activity under the FDCPA over the past year
- Learn about efforts by state legislatures around the country to grant state regulators oversight of student loan servicing entities
- Explore servicing challenges specific to private student loans, which are not subject to interest waivers or payment deferrals that apply to federal student loans under the CARES Act
- Anticipate disputes among lenders, servicers, governments, and borrowers in the private student loan space in and post-pandemic
- Engage in dialogue about the future of the student loan industry amid growing attention to student debt in electoral campaigns

10:45 Networking Refreshment Break

11:00

## Minimizing Liability Under the FCRA Amid a Recent Uptick in Credit Reporting Litigation and a Likely COVID-19-Related Surge

 John C. Lynch, Partner, **Troutman Sanders LLP (Virginia Beach, VA)**


Andrew K. Stutzman, Co-Chair, Financial Services Litigation, **Stradley Ronon Stevens & Young LLP (Philadelphia, PA)**

- Gain insight into increased federal enforcement of the FCRA and related class action activity in the past year
- Analyze frequently litigated permissible purpose claims as well as reporting accuracy and dispute investigation claims under this Act
- Examine recent case law surrounding what constitutes correct reporting of multiple forms of delinquency, modification, and bankruptcy
- Understand the modifications to the FCRA pursuant to the CARES Act, which impose limits to reporting of payment accommodations made due to the coronavirus crisis
- Assess the consequences of continued credit reporting during the pandemic (beyond the specific limitations cited in the CARES Act) and litigation that consumers are likely to initiate

12:00 Networking Lunch

1:15

## Evolving Challenges in the Fintech Space: Fair Lending, True Lender, Accessibility, and Automated Payment Litigation

 Frank R. Borchert, General Counsel, **Marlette Funding, LLC** (Wilmington, DE)

Noah A. Levine, Partner, **WilmerHale (New York, NY)**

Darren M. Welch, Counsel, **Skadden Arps Slate Meagher & Glom LLP (Washington, DC)**


- Learn how financial institutions and their tech partners are meeting their ECOA obligations in processing consumer information and delivering advertising through online platforms
- Examine developments in true lender litigation and related legislative and regulatory efforts to undo the precedent set by the *Madden* decision
- Assess emerging litigation under the *Americans with Disabilities Act* over accessibility barriers on online financial services platforms
- Analyze challenges relating to automated payments under the *Electronic Funds Transfer Act* in web-based finance
- Anticipate an increased prominence of Fintechs as consumers heighten their online presence and become more accustomed to transacting online during the coronavirus pandemic

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2:00

## The TCPA Litigation Landscape: Novel Disputes, Ongoing Ambiguities, and Key Takeaways from Recent Case Law


 Jeffrey Pilgrim, Partner, **Pilgrim Christakis LLP (Washington, DC)**  
Mark E. Rooney, Partner, **Hudson Cook LLP (Washington, DC)**

- Stay on top of case law relating to the definition of an Automatic Telephone Dialing System (ATDS), which triggers protection under the TCPA
- Understand how pending guidance from the Federal Communications Commission (FCC) on what constitutes an auto-dialer will shape future litigation and class action activity
- Analyze arguments made in revocation of consent disputes and the dispositions of these cases
- Identify strategies for effectively deploying resources to defend TCPA cases, considering that a finding of liability involves significant relief for plaintiffs

### 3:00 Networking Refreshment Break

3:15

## New Privacy Legislation: Preparing for a Major Source of Class Action and Enforcement Activity Going Forward

 Amanda R. Lawrence, Partner, **Buckley LLP (Washington, DC)**  
Esther Slater McDonald, Partner, **Seyfarth Shaw LLP (Atlanta, GA)**

- Assess the impact of the *California Consumer Privacy Act (CCPA)* and analogous efforts in other states on the financial industry
- Examine ambiguities in the scope of the private right of action under the CCPA which are likely to be debated in litigation
- Explore ways in which the plaintiffs' bar is leveraging the CCPA despite restrictions on a private right of action, and delve into the first wave of class actions filed since the law took effect
- Learn how consumers' increased online presence in the coronavirus crisis and financial service providers' continued tracking of online activity is likely to provide ground for privacy-related disputes
- Anticipate CCPA actions against the industry in light of the California AG's refusal to defer enforcement amid the pandemic

4:15

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