

Chapman Client Alert

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Current Issues Relevant to Our Clients

Supreme Court Asks for Government View on Madden Appeal

Court Seeks Government Brief

On Friday, March 18, 2016, the United States Supreme Court issued a call for the views of the Solicitor General of the United States before it decides whether to hear an appeal from a Second Circuit Court of Appeals decision rendered last May in the case of *Madden v. Midland Funding, LLC* that has created quite a stir in the financial services industry. For more information on that case, see our Client Alert on the Second Circuit's decision, available [here](#).

Second Circuit Decision

In May, and reversing a contrary district court opinion, the Second Circuit ruled that when a bank sells a loan to a non-bank, in this instance a debt collector, and no longer has any interest in the loan, that the non-bank holder is not entitled to take advantage of the federal preemption afforded to the bank and to collect interest at the rate the bank was able to charge. Rather the non-bank is limited to charging interest in accordance with state usury rates. *Midland Funding*, the purchaser/assignee of the *Madden* loan applied for a rehearing of the case by the Second Circuit which was denied. *Midland* then filed a petition for writ of certiorari, asking the Supreme Court to hear the case.

Initially, *Madden* declined to file a brief, but the Supreme Court ordered *Madden* to make a submission. Financial trade groups filed amicus (friend of the court) briefs claiming that the decision creates uncertainty for national banks attempting to sell loans, violates the long-standing precedent that loans are "valid when made" (or not) and therefore, state usury considerations do not come into play when the loan changes hands. It was also argued that this decision creates

uncertainty in the funding and securitization markets and inhibits new lending initiatives such as marketplace lending.

Implications of the Ruling

The Solicitor General of the United States represents the federal government before the Supreme Court and at times, the Court seeks the view of the government on significant cases. By the Court requesting this perspective, this will elongate the process of reaching a final decision in the *Madden* appeal. The Solicitor General will likely consult with the federal banking agencies and then file its viewpoint with the Court. The Court will then decide whether or not to hear the case. This will extend the timing of any determination. In the short term, *Madden* remains in effect for the three states in the Second Circuit: Connecticut, New York and Vermont. The decision is not binding outside of the Second Circuit, but litigation in other jurisdictions could ask other courts to adopt the views of the *Madden* decision.

For More Information

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