



## Parties Agree to Settle Claims in *Madden v. Midland Funding, LLC*

March 11, 2019 |

On March 1, 2019, the parties in *Madden v. Midland Funding, LLC*, filed a settlement agreement with the Southern District Court for New York to potentially end long-running litigation over alleged violations of state usury limitations.

The proposed class action settlement would provide class members \$550,000 in monetary relief and \$9,250,000 in credit balance reductions. The proposed settlement would also provide \$550,000 for attorney fees. In addition, Midland Funding would agree to comply with all applicable laws, regulations, and case law regarding the collection of interest.

The original litigation started in 2011 when a New York resident sued Midland Funding in the Southern District Court for New York for violations of state usury laws and the federal Fair Debt Collection Practices Act. Midland Funding had purchased the plaintiff's defaulted credit card account from a national bank and charged the plaintiff a default interest rate exceeding the New York usury limitation. The default interest rate had been contracted for by the national bank that originated the credit. In 2013, the court entered judgment in favor of Midland Funding, holding that Section 85 of the National Bank Act preempted state usury claims against Midland Funding. However, on appeal in 2015, the Second Circuit held that the national bank's preemption authority under Section 85 of the National Bank Act did not extend to Midland Funding, a non-bank purchaser of the loans. The Second Circuit decision contradicted the "valid when made" theory, whereby an obligation is considered valid under the law that applied at the time of origination.

The U.S. Supreme Court declined to hear the case in 2016. On remand in 2017, the Southern District Court for New York determined that New York law applied to the claims despite a Delaware choice-of-law provision in the original credit card agreement. The court noted that Midland Funding failed to show that Delaware had a reasonable relationship to the transaction and found that application of Delaware law would violate a fundamental public policy of New York as expressed in its criminal usury statute. Although the court found that the New York criminal usury statute did not provide a private right of action, the court allowed the FDCPA and state unfair and deceptive acts and practices claims to proceed, using the criminal usury violation as a predicate act. Essentially, the court found that violations of the criminal usury statute supported claims under the other laws. The court also granted class certification.

Memorandum in Support of Joint Motion for Preliminary Approval of Class Settlement

© 2018 CounselorLibrary.com, LLC. Republished with permission. All rights reserved.

CounselorLibrary.com, LLC, is an entity affiliated with the law firm of Hudson Cook, LLP. CounselorLibrary.com, LLC articles are written by attorneys with Hudson Cook, LLP, and by other authors, including employees of CounselorLibrary.com, LLC. The views and opinions contained in the articles do not constitute the views and opinions of Hudson Cook, LLP. CounselorLibrary(R) products and services are available directly through and from www.CounselorLibrary.com and are not legal advice.

Hudson Cook, LLP provides articles, webinars and other content on its website from time to time provided both by attorneys with Hudson Cook, LLP, and by other outside authors, for information purposes only. Hudson Cook, LLP does not warrant the accuracy or completeness of the content, and has no duty to correct or update information contained on its website. The views and opinions contained in the content provided on the Hudson Cook, LLP website do not constitute the views and opinion of the firm. Such content does not constitute legal advice from such authors or from Hudson Cook, LLP. For legal advice on a matter, one should seek the advice of counsel.

**SUBSCRIBE TO INSIGHTS**

# HUDSON COOK

Hudson Cook, LLP is a national law firm representing the financial services industry in compliance, privacy, litigation, regulatory and enforcement matters.

7037 Ridge Road, Suite 300, Hanover, Maryland 21076  
410.684.3200

**[hudsoncook.com](https://hudsoncook.com)**

© Hudson Cook, LLP. All rights reserved. Privacy Policy | Legal Notice  
Attorney Advertising: Prior Results Do Not Guarantee a Similar Outcome

