

Michigan Banker

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Maddin Hauser: The Banker's Law Firm

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...and So Much More!

Maddin Hauser: The Banker's Law Firm

By Charles M. Cooper

With roots stretching back to 1925, Southfield-based Maddin, Hauser, Roth & Heller, P.C. has represented clients in the lending and banking industry for decades. The firm occupies a unique place in today's banking environment: Michigan-based, yet with a national presence; mid-sized, but having substantial depth across the wide spectrum of banking services. Given the environment in which today's financial services industry operates, filled with litigation land mines, sweeping regulatory changes, shifting investor requirements and guidelines, and aggressive enforcement activities – along with ever-increasing compliance costs – Maddin Hauser's efficiency and expertise are more important than ever.

Banks need trusted advisors who “live and breathe” these issues to help them navigate this environment. Maddin Hauser's industry expertise, efficiency, and cost effectiveness; along with the firm's rare, high-level “at the table” experience with bank boards and government regulators, and its extensive “in the trenches” expertise; provides the global perspective required. The firm's holistic approach successfully leverages efficiencies on multiple levels to create enhanced outcomes resulting in a positive, bottom-line impact.

Independent Foreclosure Review

For over two years, Maddin Hauser was one of a handful of law firms assisting with the largest, most comprehensive, and far-reaching default servicing audit in U.S. history. The national Independent Foreclosure Review (IFR) involved auditing the default servicing practices of the nation's largest mortgage servicers. “We were honored to have been selected in recognition of our unique combination of expertise in regulatory compliance and litigation,” stated Martin S. Frenkel, Co-Chair of the firm's Consumer Finance



Front row (sitting L to R): Martin S. Frenkel, John P. Gonway
Standing (L to R): Kristina E. Janssens, David E. Hart,
Ryann O'Boyle Bunch

Regulatory Compliance and Real Property Practice Group.

During the IFR, Maddin Hauser's compliance team, lead by Brian A. Nettleingham, one of the firm's regulatory compliance experts, worked with regulators and one of the nation's preeminent due diligence consulting firms to assess, create, and implement testing solutions for a national servicer to

measure compliance with state and federal laws, investor requirements, and internal servicer policies. The firm also assisted in, among other things:

- Evaluating compliance with foreclosure laws and processes from all fifty states.
- Assisting in the auditing of thousands of individual loan files.
- Identifying potentially high-risk issues, developing uniform testing and remediation solutions, and proposing cutting-edge regulatory guidance addressing servicing issues.
- Evaluating servicer compliance with internal policies and procedures.

One key lesson from this intensive, high-level compliance experience is that the cost of non-compliance, even the inability to demonstrate compliance, can be extraordinary. Some estimates place the cost of the audit to all 15 servicers, *not* including penalties and settlement dollars, in the *billions*. Another was that, while achieving compliance for government regulators is important, employing trench-level litigation expertise to backroom processes serves bank clients well by reducing potential litigation. Stated differently, if a bank's backroom processes comply with regulations, why not simultaneously ensure that those same processes reduce possible borrower litigation.

Regulatory actions, such as the IFR, provide Maddin Hauser with insight into how regulators apply statutes and regulations, particularly where there is no published guidance. As a result, the firm has integrated these insights into its highly innovative compliance audit and testing procedures for the benefit of its clients. For example, the Service Members Civil Relief Act (SCRA), which provides certain protections for active duty service members, was a key focus area for regulators. Maddin Hauser's involvement gave it a rare insider's view of how to identify best practices for demonstrating an institution's SCRA compliance, including:

- Preservation of Department of Defense search records (even absent a legal obligation to do so).
- Careful documentation of SCRA interest rate reductions and applying the broadest possible definition of "fees" for the purpose of determining the effective interest rate.
- Default judgments and affidavits should be handled with great care, and any database searches regarding a borrower's military status should be updated before filing.

The New Environment: Dodd-Frank/CFPB

Much has been written about the Dodd-Frank Act, and creation of the CFPB. The CFPB has imposed new regulations, such as those surrounding the new Ability to Repay and Qualified Mortgage rules, which include objective-based regulations as well as specific procedural regulations. Maddin Hauser applied the lessons from prior enforcement efforts in developing its pioneering ASPECT™ System. The system is designed to meet the challenges of this new regulatory environment by leveraging enhanced compliance testing scripts with methods for flexibly applying those scripts to meet client objectives and budgets.

The ASPECT™ system uses lessons learned to ensure the satisfaction of regulator requirements for documenting a lender's satisfaction of the ATR



L to R: Lavinia S. Biasell, John E. Jacobs, Lindsey R. Johnson

and QM standards. It focuses on an institution's need to self-police and self-report compliance violations consistent with the CFPB's stated importance that regulated entities exhibit "responsible business conduct." It also ensures that proper documentation is preserved to defend inevitable litigation that will arise related to ATR/QM standards. Furthermore, while the

proprietary scripts address existing mortgage rules and regulations, they also address new consumer causes of action that were created by Congress for violation of standards regarding underwriting, compensation schemes, mortgage servicing transfers, loan modifications, and others.

In that same vein, Maddin Hauser's efficiency is demonstrated by the development of another proprietary tool, the Lending Litigation Toolkit (L2TK™). In creating L2TK™, Maddin Hauser combined its significant lending litigation and regulatory compliance experience in a sophisticated toolkit that provides an early and thorough assessment of lending litigation claims. This valuable information helps clients identify litigation objectives and act on a proposed course of action designed to resolve the case by settlement or motion early in a lawsuit, helping to eliminate the most significant factor in determining the amount of litigation expenses: the amount of time a case takes to resolve.

Flood Insurance

Another example of Maddin Hauser's regulatory compliance work relates to federal flood insurance. Compliance with these regulations is an increasing concern for financial institutions, as important changes continue to occur. "The potential impact on consumers, and the associated risks to lenders of civil penalties for violations make the correct application and monitoring of flood insurance requirements crucial. We have extensive expertise in this area," stated John P. Gonway, a leader in the firm's Lending, Finance, and Real Estate practice areas.

Federal law prohibits lending institutions from making, increasing, extending, or renewing a loan secured by improved real estate or a mobile home located, or to be located, in a flood zone in a community participating in the National Flood Insurance Program (NFIP), unless the property securing the loan is covered by acceptable flood insurance. As an alternative to coverage under the NFIP, borrowers have the option to purchase flood insurance through private flood insurance companies, which often offer more competitive rates and sometimes broader coverage. Forthcoming changes to federal regulations will require lenders to accept private policies that meet federal regulations.

It is the lender's sole responsibility to ensure that the private flood insurer and its flood insurance product are acceptable. FEMA offers certain guidelines as criteria for acceptance of private flood insurance policies. Every private flood insurance policy must be reviewed to ensure that flood insurance requirements are met, which can be a difficult, time-consuming process.

In developing its specialized expertise relating to flood insurance, Maddin Hauser's team of experts, including Ryann O'Boyle Bunch, an associate of the firm, have performed numerous compliance



L to R: John E. Jacobs, Brandon K. Buck

reviews for lending institutions, including analysis and evaluation of the lender's flood insurance policies. Consistent with the firm's continuing search to find efficiencies for its clients, extensive knowledge of both insurance coverage and regulatory compliance allows it to cost-effectively tackle such issues. This often includes assisting its



L to R: David G. Michael, Kristina E. Janssens, Lavinia S. Biasell

bank clients in negotiating with insurance agents and underwriters to endorse policies that comply with both FEMA mandates and bank policy, negotiating with an insurer to resolve coverage issues, and assisting banks in developing their own effective internal compliance program to review private flood insurance policies in-house.

Maddin Hauser's commitment to efficiency, deep expertise, and its cost-effective approach is a powerful combination. Additionally, the firm offers an extensive portfolio of services spanning the entire continuum of banking practice: commercial lending/loan documentation work, commercial foreclosures, receiverships, workouts, regulatory compliance, bankruptcy, and consumer litigation to name a few. Maddin Hauser has many achievements to highlight, ranging from engaging in several \$100 million dollar-plus multi-state real estate acquisitions, to some of the highest profile banking and real estate-related litigation in Michigan, to participating in one of the largest regulatory compliance projects in modern history. With that background and experience, it is little wonder that Maddin Hauser is the law firm for Michigan's banks.

To receive a complimentary copy of the firm's Compliance Guide, call Michelle Dodds at (248) 359-6317, or visit www.maddinhauser.com.

From the cover photo: Seated (L to R): Kristina E. Janssens, Martin S. Frenkel, John P. Gonway, Ryann O'Boyle Bunch, *Standing (L to R):* Mark E. Plaza, Lavinia S. Biasell, David E. Hart, Steven D. Sallen, Brandon K. Buck, Lindsey R. Johnson, David G. Michael and John E. Jacobs