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**MEMORANDUM**

August 13, 2015

To Our Clients and Friends

Re: Second Circuit Denies Midland Funding Petition for Rehearing

The Second Circuit Court of Appeals has denied the request of Midland Funding, LLC for a rehearing by the panel as well as a request for rehearing *en banc*. This means that the remaining course of action is to apply to the U.S. Supreme Court for a writ of *certiorari*.

In May, the Second Circuit panel had held that the National Bank Act does not necessarily pre-empt state usury laws when a nonbank entity purchases loans from a national bank.<sup>1</sup> Midland had purchased the plaintiff's loan from the national bank that had originated the loan and subsequently charged it off when the plaintiff defaulted. The rate of interest the national bank charged the plaintiff was permitted under the law of its home state but exceeded the maximum rate permitted by the state of the plaintiff's residence.

The court stated that because Midland is not a national bank or its agent, or otherwise acting on behalf of a national bank, and because applying state law would not significantly interfere with the national bank's ability to sell loans to third parties, the National Bank Act did not preempt the plaintiff's claim that the rate charged on the loan exceeded state rate ceilings.

A copy of the court's decision and order denying the petition for rehearing can be found on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Ben Gray at (202) 776-0700.

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<sup>1</sup> *Madden v. Midland Funding, LLC*, 2015 U.S. App. LEXIS 8483 (May 22, 2015).