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MEMORANDUM

March 6, 2017

To Our Clients and Friends

Re: District Court Denies Midland Summary Judgment and Certifies Class

The U.S. District Court for the Southern District of New York has determined that a lawsuit alleging that a major debt collection firm Midland Funding LLC violated the state's usury laws could move forward and certified a class action. The class action covers approximately 50,000 residents of New York. The matter was remanded back to the District Court after the Second Circuit Court of Appeals' denial of Midland's petition for rehearing, and the Supreme Court's refusal to grant review of the Second Circuit's May 2015 decision.

The Second Circuit previously had held that the National Bank Act does not necessarily preempt state usury laws when a nonbank entity purchases loans from a national bank. 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 Delaware law, which was the law cited in the cardholder's agreement, but exceeded the maximum rate permitted by New York, which was 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. The court also refused to enforce the choice-of-law clause in the plaintiff's loan agreement on the basis that New York's strong public policy against interest rates in excess of 25 percent should be applicable.

A copy of the court's decision and order are available 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 Magda Gathani at (202) 776-0700.