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New York Court of Appeals grants application to file an *amicus curiae* brief submitted by RK&O Partners Brian Fraser and Lucinda McConathy on behalf of the LSTA

Brian Fraser and Lucinda McConathy

Amicus Curiae Brief

September 3, 2009

On August 27, 2009, New York's highest court, the Court of Appeals, granted an application to file an *amicus curiae* ("friend of the court") brief submitted by Richards Kibbe & Orbe litigation partners Brian S. Fraser and Lucinda O. McConathy on behalf of The Loan Syndications & Trading Association, Inc. ("LSTA"). The oral argument is scheduled for 2:00 p.m. EDT on Wednesday, September 9, 2009, and may be viewed on the Court of Appeals website. The case involves the common law doctrine of champerty, as codified in New York by statute, and the assignability of claims and causes of actions.

The case is now before New York's highest court because the United States Court of Appeals for the Second Circuit sought clarification of New York's law of champerty and certified questions of New York law regarding champerty to the New York Court of Appeals. The LSTA submitted its *amicus* brief to the New York court to express the view of the Association that an assignment of a claim or cause of action as part of the sale or transfer of a loan is not champerty under New York law. [Click here to view the motion and the brief.](#)

The LSTA is a not-for-profit trade association that represents participants in the market for the origination, syndication and trading of corporate loans. The 279 members of the LSTA include commercial banks, investment banks, broker-dealers, hedge funds, mutual funds, insurance companies, fund managers and other institutional investors.

The case is Trust for the Certificate Holders of the Merrill Lynch Mortgage Investors, Inc. Mortgage Pass-Through Certificates, Series 1999-C1, by and through ORIX Capital Markets, LLC, as Master Servicer and Special Servicer v. Love Funding Corp., Appeal No. 107, (July 23, 2009).