

March 4, 2011

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Federal Issues

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Courts

Fourth Circuit Holds That Penalties Under the Veterans' Benefits Act of 2010 May Be Applied Retroactively. On February 14 the Court of Appeals for the Fourth Circuit determined that the penalty provisions of the Veterans' Benefits Act of 2010 (VBA), which amended the Servicemembers Civil Relief Act (SCRA) to provide a private right of action for damages, could be applied retroactively. *Gordon v. Pete's Auto Service of Denbigh, Inc.*, No. 09-2393 (4th Cir. Feb. 14, 2011). The decision involved a deployed active duty servicemember whose auto was towed, and then sold by the garage that had towed it in order to collect for its related expenses (no effort was made to contact the plaintiff about the towing or the amount due). In December, 2008 the servicemember sued the garage under both Virginia's law of conversion and SCRA § 307, which requires a court order to enforce a lien

against a servicemember's "property or effects" while a servicemember is deployed (and for 90 days thereafter). Plaintiff brought the action in the Eastern District of Virginia. In November, 2009 the district court determined that it lacked subject matter jurisdiction because the SCRA did not at that time provide a private cause of action for damages. The court therefore dismissed plaintiff's claims. Plaintiff appealed and while his appeal was pending, the President signed the VBA into law. The VBA added § 802(a) to the SCRA, providing a private right of action for violations of the SCRA and also § 802(b), allowing prevailing plaintiffs to recover the cost of the action. On appeal, the question before the court was whether applying the newly-passed SCRA § 802 to appellant's case "would be impermissibly retroactive". Writing for a unanimous panel, Circuit Judge Wilkinson determined that it would not. The court found that § 802(a) did not impair the parties' rights nor impose "new duties", because the right to seek enforcement of SCRA § 307(a) in Virginia's courts under the state's law of conversion predated § 802(a)'s enactment. The court further found that applying the penalty provisions of § 802(b) worked no impermissible retroactive effect and concluded that Section 802's real effect was merely to provide appellant with "a federal forum." The court reasoned that the application of SCRA § 802 would simply result in a "jurisdictional change," not impermissible retroactivity. The judgment of the district court was therefore reversed and the matter remanded for trial. The VBA penalty structure, which permits courts to assess civil penalties of up to \$55,000 for a first SCRA violation and up to \$110,000 for any subsequent violations, may now also be retroactive under the Fourth Circuit's ruling. [Click here for a copy of the opinion.](#)

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Firm News

BuckleySandler LLP will host its West Coast Mortgage Lending and Servicing Today Conference on Monday, April 11 at the Balboa Bay Club and Resort in Newport Beach, CA. The conference will focus on compliance, regulatory and litigation issues in today's changing mortgage lending and servicing environment. For more information, please visit <http://fairlendingtoday.com/>. To register for the conference, please email Anne McKenzie at amckenzie@buckleysandler.com.

[Manley Williams](#) will be moderating the Consumer Credit panel in the American University Law Review symposium, "Emerging From the Recession with the Help of Increased Consumer Protection and Heightened Corporate Responsibility," on March 3 in Washington, D.C. The speakers on Ms. Williams' panel include: Eric Chaffee, Associate Professor, University of Dayton Law School; Thomas B. Pahl, Federal Trade Commission, Bureau of Consumer Protection, Division of Financial Practices; and Travis Plunkett, Consumer Federation of America.

[James Parkinson](#) will speak on the Foreign Corrupt Practices Act as a Visiting Lecturer at Universidad Panamericana, Mexico (via videoconference), on March 16.

[Margo Tank](#) will be speaking at the E-Signature Summit for Banking Executives in New York on April 8.

[James Parkinson](#) will participate on a panel entitled "The Role of the Lawyer in Preventing Corruption," at the International Bar Association's Bar Leaders Conference in Miami, on May 4.

[James Parkinson](#) will be speaking at the ACI's "FCPA Compliance in Emerging Markets" program in Washington, D.C., on June 15-16.

Miscellany

Former Senior Vice President of Colonial Bank Pleads Guilty to Fraud Scheme. On March 2, a group of 8 federal officials from a wide variety of federal agencies announced that, Catherine Kissick, a former senior vice president of Colonial Bank and head of its Mortgage Warehouse Lending Division, pleaded guilty to conspiring to commit bank, wire and securities fraud for her role in a fraud scheme that contributed to the failures of Colonial Bank and Taylor, Bean & Whitaker (TBW). Kissick faces a maximum penalty of 30 years in prison when she is sentenced on June 17, 2011. Kissick admitted that from 2002 through August 2009, she knowingly and intentionally placed Colonial Bank and Colonial BancGroup at significant risk by causing them to purchase and hold more than \$400 million in assets on their books that had no value. Additionally, according to court documents, Kissick and her conspirators also caused TBW to engage in sales to Colonial Bank of fictitious trades that had no collateral backing them and had no value. This case was investigated by the Assistant Attorney General of the DOJ Criminal Division; the U.S. Attorney for the Eastern District of Virginia; the Special Inspector General of the Troubled Asset Relief Program; the Assistant Director in Charge of the FBI's Washington Field Office; the Inspector General of the Department of Housing and Urban Development; the Inspector General of the Federal Deposit Insurance Corporation; the Inspector General of the Federal Housing Finance Agency; and the Chief of the Internal Revenue Service Criminal Investigation Division. The Financial Crimes Enforcement Network of the Department of the Treasury also provided support in the investigation. For a copy of the press release, please see <http://www.justice.gov/opa/pr/2011/March/11-crm-267.html>.

Former U.S. Mortgage President Sentenced to 14 years in Prison. On February 24, Michael J. McGrath Jr., the former president and controlling shareholder of closely-held U.S. Mortgage, was sentenced to 168 months in prison for his role in orchestrating a \$136 million fraud scheme that bankrupted both U.S. Mortgage Corp. and its subsidiary CU National Mortgage LLC. McGrath had previously pled guilty to one count of mail and wire fraud conspiracy and one count of money laundering. From 2002 to Jan. 27, 2009, McGrath conspired to fraudulently sell Fannie Mae hundreds of loans belonging to various credit unions. U.S. Mortgage's chief financial officer and its servicing manager, Leroy Hayden, were also involved in the conspiracy. McGrath directed Hayden to falsify records to conceal the fraudulent sales. Hayden had provided numerous reports to credit unions that falsely stated that loans that had been sold were still in the credit unions' portfolios. McGrath admitted

that the scheme was used to prop up U.S. Mortgage by funding its operations, and he also used the proceeds for personal investments and investments on U.S. Mortgage's behalf. On Jan. 27, 2009, dozens of law enforcement agents executed a search warrant at U.S. Mortgage and CU National's Pine Brook headquarters. McGrath consented to forfeiture of the proceeds of his crimes, \$14 millions of his assets that the government froze, and the restitution order is expected to require McGrath to pay more than \$136 million in restitution to his victims. Hayden pled guilty to one count of wire fraud and conspiracy. He is scheduled to be sentenced on March 24, 2011. For a copy of the press release, please see <http://www.stopfraud.gov/news/news-02242011.html>.

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