

The Banking Law Journal

Established 1889

AN A.S. PRATT & SONS PUBLICATION

FEBRUARY 2014

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POSTMASTER: Send address changes to THE BANKING LAW JOURNAL LexisNexis Matthew Bender, 121 Chanlon Road, North Building, New Providence, NJ 07974.

HIGHWAY TO THE DANGER ZONE: AUTOMOTIVE LENDING AND THE SERVICEMEMBERS CIVIL RELIEF ACT

KIRK D. JENSEN, JOHN C. REDDING, AND SASHA LEONHARDT

The authors discuss recent enforcement trends under the Servicemembers Civil Relief Act, and how they apply to the servicing of auto loans. The authors highlight important protections for servicemembers and the compliance challenges they raise for creditors. The authors also explain how their legal research casts doubt on recent interpretations of the SCRA espoused by federal regulators.

This past March, Carl Nuss — a 75-year-old used car dealer from Birmingham, Alabama — received a letter from one of his customers, requesting that Mr. Nuss reduce the customer's interest rate to six percent since the customer was overseas with the military.¹ Instead, because the customer was thousands of dollars behind on his car payments, Mr. Nuss repossessed and sold the car, as permitted under the contract.² Two months later, Mr. Nuss was indicted on two counts of violating of the Servicemembers Civil Relief Act³ ("SCRA") — first for failing to reduce the customer's interest rate, and second for repossessing the vehicle without a court order while the customer was on active duty.⁴ Each count is punishable by up to one year in jail and a \$100,000 fine.⁵ On June 27, Mr. Nuss pled guilty to both SCRA violations.⁶

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Over the past few years, federal regulators — led by the Department of Justice — have sharply increased their focus on SCRA compliance. Although most recent headlines related to SCRA enforcement have arisen in the area of home mortgages, several major enforcement actions and multi-million dollar settlements indicate that regulators are looking beyond residential mortgage loans to identify possible violations involving all consumer asset classes, including auto loans.⁷

For financial institutions, the costs of SCRA non-compliance can be severe. The SCRA provides that the Department of Justice may seek penalties of up to \$55,000 for a first violation and \$110,000 for any subsequent violations;⁸ Congress is currently weighing legislation that would double these penalties for individual violations to \$110,000 and \$220,000, respectively.⁹ The SCRA also permits servicemembers to file their own private causes of action,¹⁰ and some attorneys have attempted to create class action lawsuits predicated upon uniform servicing practices being applied nationwide.¹¹ Both federal and state regulators now consider SCRA compliance one of their primary areas of focus in examining institutions, and their enforcement attorneys are carefully attuned to SCRA issues. State attorneys general — most notably the Attorney General of Delaware — have requested information from auto finance companies and banks regarding their compliance with the SCRA.¹² Furthermore, the reputational risk of improperly servicing loans for active duty servicemembers is substantial. Finally, Mr. Nuss's case demonstrates that the Department of Justice will not hesitate to invoke the SCRA's criminal provisions to protect servicemembers. Thus, creditors ignore the SCRA at their peril.

HISTORY OF THE SCRA

While many sections of the SCRA have remained largely the same over time, both the banking and the military worlds have changed fundamentally in the over 150 years since the federal government first implemented legal protections for active duty servicemembers. During this period, direct and indirect auto finance practices evolved, the secondary lending market emerged, the Uniform Commercial Code revolutionized secure lending, and consumer credit became a key element of financial stability for servicemembers and their families.

At the same time, life in the military has changed. Today's servicemembers now have access to instant communication through telephone and email, travel to permanent new stations from coast to coast and overseas, and are deployed to the farthest corners of the globe in a matter of hours.

The first law in the United States to relieve active duty servicemembers of their civilian obligations was passed during the War of 1812. With British troops rapidly advancing on New Orleans and battles raging along the nation's western border, the state of Louisiana implemented "stay laws" which suspended all civil proceedings during the four harshest months of the conflict.¹³ Several decades later, Congress passed a similar law during the Civil War which barred any civil action against a member of the Union army or navy, including breach of contract, bankruptcy, foreclosure, or divorce.¹⁴ Rather than offer servicemembers any substantive benefits, these nineteenth-century predecessors to the modern SCRA focused on delaying civil suits until a servicemember could return home and meaningfully participate in the legal proceedings.¹⁵

However, laws protecting servicemembers did not approach their current form until 1918. Entitled the Soldiers' and Sailors' Civil Relief Act ("SSCRA"), that law contained many of the same protections that exist today.¹⁶ During World War II, Congress reenacted the law and made a handful of revisions, including the addition of the interest rate protection.¹⁷ In 2003, Congress again reenacted the law — making the most significant modifications to its substantive provisions in decades — and renamed it the Servicemembers' Civil Relief Act. Through two centuries of diverse conflicts and legislative reenactments, the underlying purpose of these servicemember-protection laws has remained the same: "to enable such persons [in military service] to devote their entire energy to the needs of the Nation"¹⁸ and to "level the playing field so that military personnel are not disadvantaged because of their commitment to our nation."¹⁹

Currently, the SCRA touches almost all of a servicemember's civil obligations and legal rights, including consumer lending, health care, insurance, and land rights. However, the substantive protections that pose the greatest challenges for those who work in the auto finance industry are:

- Limitation of interest rates to six percent during active duty;
- Limitations on repossessing a vehicle for breach of an auto loan;

- Limitations on repossessing a vehicle for breach of an auto lease;
- Limitations on repossessing a vehicle for breach of a storage lien; and
- Lease termination rights granted to servicemembers.

Decades of piecemeal updates have left substantial gaps in the SCRA — gaps even the 2003 reenactment failed to fill. And while these updates have modernized the SCRA in many respects, many provisions remain largely unchanged from the World War II version of the Act — and in some cases even from the 1918 version of the Act. These gaps and anachronistic provisions make it difficult for lenders, servicers, and auto finance companies to implement comprehensive compliance plans to provide servicemembers with necessary protections under the law. While some of these gaps and anachronisms are evident from the plain language of the law, others only become apparent when the SCRA is actually applied to the modern auto finance industry.

SCRA INTEREST RATE BENEFITS

Of all of the SCRA benefits, the one that typically creates the greatest compliance challenges for auto loan servicers is the interest rate benefit. Section 527 of the SCRA states that — once a servicemember provides a creditor with written notice and a copy of the “military orders calling the servicemember to military service” — the creditor must reduce the servicemember’s interest rate to six percent.²⁰ If the military extends the servicemember’s period of active duty military service, the servicemember must also provide the creditor with the orders extending military service to remain eligible for continuing benefits under Section 527.²¹ This interest rate reduction lasts for the period of active duty for most obligations — including auto loans — but any obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage receives the interest rate benefit for the period of active duty plus one year.²² Creditors are statutorily prohibited from recovering this lost interest from the servicemember, as any interest that would have been charged but for the interest rate cap must be forgiven.²³

Definition of Interest

The SCRA contains a uniquely broad definition of the term “interest.” The traditional definition of “interest” is limited to funds paid as compensation for the use of money.²⁴ The SCRA appears to adopt this traditional definition by defining “interest” not with a recitation of what interest is, but rather what this longstanding definition of interest may include; under the SCRA “interest” includes “service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.”²⁵ Although this is an expansive definition of interest, some charges — in particular those for add-on products or additional services that are not directly related to the extension of credit — should not be included in this definition of interest. Because these add-on fees arise from separate agreements, these fees are not “with respect to the obligation or liability” and are not subject to the SCRA interest rate protection. And while some have read the broad definition of “interest” to include charges that go beyond the traditional meaning of interest, charges that do not compensate the creditor for the extension of credit (*e.g.*, those not retained by the creditor) should fall outside the statutory definition.

Determining which fees are “interest” and which are not can be a difficult and fact-intensive question. Often, this requires a close analysis of the contractual documents related to the obligation or liability, as well as the documents governing the collateral agreement, to determine whether the charges are truly collateral. Furthermore, this is an area of ongoing development as federal regulators continually confront new scenarios under the SCRA and refine their interpretation of the statute.

Qualifying Military Orders

Another key point of concern for creditors has been what qualifies as a set of “military orders calling the servicemember to military service.” In a military career, borrowers are given numerous official documents: enlistment papers, discharge forms, travel documents, military identification cards, training papers, deployment orders, and change of station orders, just to name a few. Of these documents, only a small number qualify as “orders” — that is, only a small number actually direct a servicemember to take any action. And

within this category, an even smaller number are “military orders *calling the servicemember to military service*.” For example, servicemembers often receive Permanent Change of Station Orders, Temporary Change of Station Orders, and Temporary Duty Orders. These orders do not call a servicemember to active duty — rather, they order a servicemember who is already on active duty to report to a different location or undertake a new task. On their face, these orders do not meet the statutory requirements, and a borrower who provides such orders is not entitled to the SCRA interest rate benefit.

Furthermore, public policy supports the conclusion that Permanent Change of Station Orders, Temporary Change of Station Orders, and Temporary Duty Orders are not “military orders calling the servicemember to military service” under Section 527. There are sound reasons why Congress required servicemembers to provide military orders calling the servicemember to active duty. A servicemember is entitled to the SCRA’s interest rate protection retroactive to the first day of active duty service.²⁶ The requirement that a borrower submit military orders “calling the servicemember to military service” ensures that a creditor knows when military service begins and can provide the borrower with the appropriate interest rate benefit. Congress, understanding that the first date of military service was a necessary piece of information to provide the interest rate benefit, explicitly required military orders submitted under Section 527 to “indicate the period of time for which the servicemember is called to duty.”²⁷ As part of a servicemember’s duty to submit “written notice and a copy of military orders,”²⁸ this requirement serves to put creditors on notice for when, absent the submission of extension orders, the borrower is eligible for interest rate protection.²⁹ Furthermore, this provision also protects servicemembers by ensuring that they receive the maximum SCRA benefits allowed under the law.

Additionally, when drafting the SCRA, Congress understood that there is a difference between military orders and Permanent or Temporary Change of Station Orders. In drafting Section 535 of the SCRA, Congress specifically allowed Permanent Change of Station Orders — as well as active duty orders — to fulfill the requirements to qualify for lease protections.³⁰ It is a fundamental rule of statutory interpretation that “[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and

purposely in the disparate inclusion or exclusion.”³¹ It follows that Congress’s omission of Permanent Change of Station Orders in Section 527 should be seen as intentional; therefore, Change of Station Orders — and other orders that do not call a servicemember to active duty military service — should not be considered “military orders” under Section 527.

Notwithstanding these sound policy reasons and clear legislative intent, some federal regulators have taken a broader view of Section 527’s orders requirement and are treating virtually any document issued by the military as a set of qualifying orders — even if it does not call a servicemember to active duty military service. Regulators have used — and continue to use — consent orders and the threat of legal action to force creditors in all spheres, including auto loan servicing, to provide benefits based upon this broader view of military orders.³² This position, however, is inconsistent with the unambiguous statutory text and misunderstands the purpose of the SCRA’s orders requirement. Because regulators have consistently taken positions that go beyond the unambiguous statutory text, auto loan servicers should approach Section 527’s orders requirement with caution.

DEFAULT SERVICING

Once a servicemember enters active duty, there are three different provisions that may protect a servicemember who stops making payments on an automobile: Section 532, which applies to auto loans; Section 535, which covers auto leases; and Section 537, which includes storage liens against vehicles.

Section 532 – Auto Loans

The SCRA protects servicemembers with auto loans from repossession. Section 532 of the SCRA provides that the creditor may not terminate an installment contract for purchase or lease, nor may the creditor repossess the vehicle, during military service.³³ However, much like the parallel provision for loans secured by a mortgage or deed of trust — Section 533 — a creditor may first obtain a court order and then repossess the car.³⁴

Importantly, servicemembers are only entitled to this protection if they have made a deposit or installment payment prior to entering active duty mil-

itary service.³⁵ While this may seem like a simple factual question to resolve, in some instances this can be confusing. Many servicemembers agree to enter active duty through the “Delayed Entry/Enlistment Program.”³⁶ Under this program, the servicemember enlists in the Ready Reserve portion of the military for up to one year; during this period, the servicemember is not on active duty military service. If a servicemember takes out an auto loan and makes the first payment during the Ready Reserve period, the loan will be eligible for SCRA protection when the servicemember is called to active duty military service in the future later. The difficult distinction between the Delayed Entry/Enlistment Program and the actual period of active duty military service under the SCRA has resulted in liability for some auto loan servicers. For example, in *Donahou v. Presidential Limousine & Auto Sales, Inc.*,³⁷ the servicemember enlisted in the military on January 2006, signed an installment sales contract for an automobile in June, and was ordered to active duty under the Delayed Entry/Enlistment Program in August.³⁸ The court held that, because the servicemember was enlisted but not on active duty when he made the first payment, the servicemember was entitled to protection under Section 532 of the SCRA.³⁹

The cost of such a mistake can be significant. In 2012, the Department of Justice entered into its first public consent order addressing auto loans.⁴⁰ Under the consent order, if a lender repossessed a vehicle while a servicemember was on active duty, the servicer was required to make the servicemember whole by paying for any lost equity in the vehicle and interest from the date of repossession, as well as an additional \$10,000 in compensation.⁴¹ Mistakes on just a small number of vehicles can quickly add up, so auto loan servicers must remain vigilant when moving forward with any repossession action.

Section 535 – Auto Leases

Under the SCRA, a servicemember may terminate a motor vehicle lease without penalty if the servicemember enters active duty service or otherwise receives qualifying military orders. However, a servicemember must first meet several statutory requirements to be eligible for the lease termination provision. The servicemember must receive orders to deploy for 180 days or longer within the United States,⁴² or receive permanent change of station orders

that require the servicemember to leave the continental United States for any period.⁴³ Servicemembers in Alaska, Hawaii, or United States territories who are given permanent change of station orders requiring them to leave their state or territory are also eligible to terminate their leases under the SCRA.⁴⁴ Unlike most other provisions of the SCRA which require that the servicemember be a civilian when entering into the obligation, a servicemember on active duty may terminate an automobile lease even if the servicemember was on active duty when signing the lease.⁴⁵ Furthermore, a servicemember's dependents are automatically eligible for the SCRA's automobile lease provisions; most other SCRA protections require a servicemember's dependent to petition a court for SCRA protection.⁴⁶

However, the statute does require that the servicemember (or the servicemember's dependent) take several steps prior to terminating a lease under Section 535. A servicemember who wishes to take advantage of this provision must provide the lessor with three specific items — written notice of termination, a copy of the servicemember's military orders, and possession of the vehicle in question — all within fifteen days.⁴⁷ Furthermore, Section 535 does not instantly eliminate all of a lessee's responsibilities to the lessor. Although a lessor may not impose an early termination charge, a lessor may nevertheless seek payment from the lessee for all other outstanding expenses under the lease, including overdue and prorated payments, taxes, title and registration fees, and payments for excessive wear and tear.⁴⁸

From a compliance perspective, it is important to note that, while the interest rate protection specifically requires a servicemember to provide "military orders calling the servicemember to military service," the lease provision is less restrictive. Section 535 defines military orders more broadly to include both official military orders and any notice or certification from the servicemember's commanding officer regarding the servicemember's military status.⁴⁹ Therefore, a set of orders that, under the statute, would be sufficient to allow a servicemember to terminate a lease under Section 535 may not qualify to reduce a servicemember's interest rate under Section 527.

Storage Liens – Section 537

A significant number of automotive SCRA cases have arisen not from the retail installment sales contract or auto lease provisions, but rather from

the SCRA provisions addressing storage liens.⁵⁰ Section 537 of the SCRA prohibits a lienholder from foreclosing or enforcing a lien on a servicemember's property during the period of active duty military service and for ninety days thereafter, unless the lienholder first obtains a court order.⁵¹ While at first blush the storage lien provisions would not seem to apply to auto loan servicers, under Section 537, a "lien" is defined broadly to include "a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects *for any other reason*."⁵² Thus, liens placed against vehicles by towing companies often fall under Section 537.

While the SCRA's storage lien provisions can be important for those in the automotive field, in many instances financial institutions and dealers can successfully argue that the broad language Section 537 does not apply to their particular situation. Courts have assiduously — and correctly — held that Section 537 only applies to one who actually holds a lien over a servicemember's property. When a party is not a lienholder — either because the seizure and sale is part of a retail installment sales contract,⁵³ because the lien is held by a different party,⁵⁴ or because the seizure and sale was authorized by a different provision of law⁵⁵ — Section 537 does not apply.

SCRA PROTECTION FOR RESERVISTS/NATIONAL GUARD MEMBERS

While enlisted servicemembers can plan their entry date into military service and anticipate serving full-time after entering active duty service, reservists and draftees follow a different path. Reservists are individuals with full-time civilian careers who undergo regular training until there is a military need to call them to active duty. Once they receive orders, reservists are required to leave behind their civilian jobs, families, and friends, and prepare for deployment. Similarly, although the United States has not implemented a draft since Vietnam, draftees called to active duty under the Military Selective Service Act⁵⁶ face the same abrupt interruption of their civilian life with little warning.

To address the added burden and uncertainty facing reservists and draftees, Congress enacted Section 516 of the SCRA. While those who voluntarily enter the military enjoy SCRA benefits beginning on their first day of military service, this Section provides that reservists and draftees are eligible

for SCRA protections beginning on the day they receive their military orders.⁵⁷ This provides reservists and draftees with the ability to contact creditors, obtain the interest rate benefit, provide copies of their military orders to prevent foreclosure/seizure of their property, and to begin enjoying the benefits of the SCRA as they face the stress of converting from a civilian to a military lifestyle.

Providing reservists and draftees with the proper benefits under Section 516 is a challenging task, however. Reservists do not merely include those who are members of the Army or Air Force “Reserves.” Reservists under the SCRA also include members of the Army and Air National Guards of the United States. Originally, the state militias were only subject to the authority of governors, but with the passage of the Militia Act of 1903,⁵⁸ the members of the state militias were renamed the National Guard and became a part of the federal reserve forces. Thus, individuals who are members of a state National Guard (*e.g.* New York Air National Guard, California Army National Guard) can be directed to serve under either federal or state orders.⁵⁹ When called to active duty under qualifying federal orders,⁶⁰ these individuals are entitled to the same pre-active duty benefit period that a reservist receives.

Furthermore, the wording of Section 516 is unclear as to when an individual who receives this pre-service benefit period loses SCRA benefits. The statute states that the protection period ends “on the date on which the [service]member reports for military service (or, if the order is revoked before the [service]member so reports, on the date on which the order is revoked.)”⁶¹ Some have read this confusing language to mean that reservists’ SCRA benefits end upon entry into active duty. However, when an individual leaves reservist status and enters active duty, the individual is immediately eligible for the standard SCRA benefits that are available to members of the full-time military. Additionally, if a reservist receives orders for active duty service but these orders are later rescinded, the individual is still entitled to SCRA benefits up until the date of rescission — even though the individual never enters active duty.⁶² While the American Bankers Association provided written testimony indicating that this may create a windfall for those who are never required to undertake the burdens of actual military service,⁶³ Congress nevertheless elected to provide benefits to those whose active duty orders are rescinded.

STRICT LIABILITY AND THE SCRA

The Department of Justice and other federal agencies are interpreting the entire SCRA — including the auto retail installment contract and lease provisions — as a strict liability statute. Under the Department of Justice’s view, creditors can take every precaution imaginable to ensure that they do not harm an active duty servicemember, but if the creditor accidentally violates a servicemember’s SCRA protections, the creditor is fully liable. However, the law, the legislative history, and common sense dictate that the SCRA cannot be a strict liability statute.

If there are two ways to interpret a law, and one of them makes compliance with the law impossible, then a court must reject such an interpretation of the law.⁶⁴ Similarly, the Supreme Court is clear that, where the meaning of a statute is uncertain — as here, where there is no language directly stating that the SCRA is strict liability statute — it should “be construed in such a way as to avoid unnecessary hardship.”⁶⁵

When the SCRA was originally passed as the SSCRA in 1918, and again in 1940 — indeed, even when the statute was recodified as the SCRA in 2003 — it would have been impossible to comply with the law as a strict liability statute. There was no DMDC website to check a servicemember’s period of active duty until 2005 — the only way to determine if an individual was on active duty was to mail a letter to the military, and an auto loan servicer would have to do this for every single loan that was in default prior to repossession. Such a burden is not only difficult to impose upon a creditor, but the military also would be overwhelmed by the flood of paperwork — an outcome Congress clearly did not intend when it passed the SCRA. And a strict liability reading of the SCRA finds no support in either the statutory text, the legislative history, or in a creditor’s regular implementation of the law.

Take, for example, the following three scenarios which are inconsistent with a strict liability interpretation of the SCRA:

- (1) Under the statute, SCRA protection extends to any American citizen serving in a foreign ally’s military forces.⁶⁶ However, there is no way to verify independently whether an individual is on active duty with a foreign military unless the individual contacts his creditor. The SCRA website would not reflect this kind of service, and it is well beyond the

scope of a creditor's responsibilities to contact every foreign allied government to determine if an individual is on active duty. Indeed, in many of these countries, it is unclear where a creditor would send a letter asking for active duty information, and it is unclear whether a foreign nation would disclose such information to a U.S. company.

- (2) Similarly, the eviction protections of the SCRA illustrate how the SCRA cannot be a strict liability statute. If a servicemember is subletting an apartment, the landlord often will not have the servicemember's Social Security number and therefore cannot run a website check. However, this servicemember (and his or her dependents) are allegedly entitled to the SCRA's full protection against eviction. If the servicemember never tells the landlord, then there is no way for the landlord to know that the servicemember is protected. Congress intended for servicemembers to notify their creditors, landlords, and others of their military service — and in these cases and others it is impossible to determine military status without the servicemember's notification.
- (3) Finally, the errors inherent in the DMDC website make it impossible for the SCRA to be a strict liability statute. The DMDC website states that it has experienced “a small error rate,” but does not quantify exactly how “small” this error rate is. Even a one percent error rate on a portfolio of 100,000 auto loans can mean serious trouble for servicers and servicemembers alike if the SCRA were intended to be a strict liability statute.

Notwithstanding these sound reasons to reject a strict liability interpretation of the SCRA, the Department of Justice has succeeded in at least one case in convincing a court that the SCRA is a strict liability statute. In *United States v. B.C. Enterprises*⁶⁷ (the “*Aristocrat Towing*” case), when reviewing the defendants' motions for summary judgment, the Eastern District of Virginia held that Section 537 of the SCRA is a strict liability provision. Rather than continue this case through trial, the government recently settled the *Aristocrat Towing* case for \$75,000 and a pledge to repair the credit of the aggrieved servicemembers.⁶⁸ As discussed above, there are several substantive weaknesses with the government's strict liability arguments and with the court's reasoning in *Aristocrat Towing*. However, servicers are well advised to approach *Aristocrat Towing* and the strict liability implications of the SCRA with caution.

CONCLUSION

With federal banking regulators and the Department of Justice increasing their focus on SCRA-based enforcement actions, auto loan servicers face increasing challenges under the SCRA. While the SCRA is a complicated law on its own, compliance is made even more difficult as the government goes beyond the statutory text and legislative history in interpreting the law. By understanding the statute, the government's position, and the unique burdens that are levied on servicemembers, auto loan servicers can protect their military customers and — by extension — themselves.

NOTES

¹ David Palmer, *Cullman Used Car Dealer Indicted in Federal Court*, CULLMAN TIMES, March 29, 2013.

² *Id.*

³ Servicemembers Civil Relief Act, 50 U.S.C. app. §§ 501-597b (2013).

⁴ Palmer, *supra* note 1.

⁵ *Dealer Pleads Guilty to Criminal Violation of the SCRA*, INFOBYTES, (July 2, 2013), <http://www.infobytesblog.com/dealer-pleads-guilty-to-criminal-violations-of-the-scra/>.

⁶ *Id.*

⁷ *E.g. United States v. Capital One, N.A.*, No. 1:12 -cv-000828 (E.D.Va. Jul. 26, 2012).

⁸ 50 U.S.C. app. § 597(b).

⁹ *E.g. Military Family Home Protection Act*, H.R. 1842, 113th Cong. (2013).

¹⁰ 50 U.S.C. app. § 597a.

¹¹ *E.g. Wray v. CitiMortgage, Inc.*, No. 3:12-3628-CMC, 2013 WL 3270454, (D.S.C. June 26, 2013).

¹² Letter from Gregory C. Strong, Director, Consumer Protection Unit, Delaware Dept of Justice, to auto finance companies and other lenders (Sept. 26, 2013) (on file with authors). In addition, the National Mortgage Settlement of 2012 was signed by the attorneys general of forty-nine states. Press Release, Department of Justice, \$25 Billion Mortgage Servicing Agreement Filed in Federal Court (Mar. 12, 2012).

¹³ H.R. REP. NO. 108-81, at 32 (2003).

¹⁴ MATTHEW S. DUBROW & SHANTA S. ANDERSON-WILLIAMS, THE MICHIGAN JUDGE'S GUIDE TO THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA) 2 (2009).

¹⁵ *Wigham v. Chase Auto Fin. Corp.*, 826 F. Supp. 2d 914, 917 (E.D. Va. 2011) ("Recognizing the need to provide civil protection for military service members,

Congress' [*sic*] original purpose in passing the SSCRA was to suspend proceedings and transactions during a soldier or sailor's absence so that he would have the opportunity upon returning from military service to be heard and to protect his interests."); *see also* H.R. REP. NO. 108-81, at 32-33 (2003).

¹⁶ Servicemembers Civil Relief Act of 1940, Pub. L. No. 108-189, 117 Stat. 2835 § 1 (2003) (noting that this is a restatement of the Soldiers' and Sailors' Civil Relief Act of 1940).

¹⁷ Soldiers' and Sailors' Civil Relief Act of 1940, Pub. L. No. 76-861, 54 Stat. 1178 (1940).

¹⁸ 50 U.S.C. app. § 502(1).

¹⁹ THE SERVICEMEMBERS CIVIL RELIEF ACT GUIDE, THE JUDGE ADVOCATE GENERAL'S SCHOOL, 1-3 (2006) ("JAG SCRA GUIDE").

²⁰ 50 U.S.C. app. § 527.

²¹ *Id.* § 527(b)(1).

²² *Id.* § 527(a).

²³ *Id.* § 527(a)(2).

²⁴ *See, e.g.*, Black's Law Dictionary (9th ed. 2009) (defining interest as "[t]he compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use; esp., the amount owed to a lender in return for the use of borrowed money.").

²⁵ 50 U.S.C. app. § 527(d)(1).

²⁶ *Id.* § 527(b)(2).

²⁷ H.R. Rep. No. 108-81, at 39 (2003).

²⁸ *Id.*

²⁹ *See, e.g.*, Amy J. McDonough, Gregory M. Huckabee, Christopher C. Gentile, *Crisis of the Soldiers' and Sailors' Civil Relief Act: A Call for the Ghost of Major (Professor) John Wigmore*, 43 MERCER L. REV. 667 (1992) (discussing the importance of requiring a servicemember to submit military orders) (note that all of the authors of this article are members of the military JAG corps).

³⁰ 50 U.S.C. app. § 535(b)(2)(B).

³¹ *Russello v. United States*, 464 U.S. 16, 23 (1983).

³² *E.g. United States v. Capital One, N.A.*, No. 1:12 -cv-000828 (E.D.Va. Jul. 26, 2012).

³³ 50 U.S.C. app. § 532(a)(1).

³⁴ *Id.*

³⁵ *Id.* § 532(a)(2); *Wigham v. Chase Auto Fin. Corp.*, 826 F. Supp. 2d 914, 921 (E.D. Va. 2011) ("In this case, according to Plaintiff, he entered into the installment contract for the Truck after he entered into military service.... Therefore, Plaintiff is not protected by § 532 of the SCRA for the installment contract he entered into and

which was assigned to Defendant.”).

³⁶ See 10 U.S.C. § 513.

³⁷ *Donahou v. Presidential Limousine & Auto Sales, Inc.*, No. 06-6070, 2007 WL 1229342 (W.D. Ark. April 24, 2007).

³⁸ *Donahou*, 2007 WL 122943, at *1.

³⁹ *Donahou*, at *2.

⁴⁰ *United States v. Capital One, N.A.*, No. 1:12-cv-00828-JCC-IDD, Consent Order ¶ 33 (E.D. Va. July 26, 2012).

⁴¹ *Id.*

⁴² 50 U.S.C. app. § 535(b)(2)(B)(ii).

⁴³ *Id.* § 535(b)(2)(B)(i)(I).

⁴⁴ *Id.* § 535(b)(2)(B)(i)(II).

⁴⁵ See *id.* § 535.

⁴⁶ Compare *id.* § 535(b)(2) (“A lease of a motor vehicle used, or intended to be used by a servicemember or a servicemember’s dependents...”) with *id.* § 538 (“Extension of protections to dependents.”).

⁴⁷ *Id.* § 535(c)(1). Though beyond the scope of this article, to whom the servicemember may be required to return the vehicle can also present a number of unique challenges to servicers of lease finance contracts.

⁴⁸ 50 U.S.C. app. § 535(e)(1).

⁴⁹ *Id.* § 535(i)(1).

⁵⁰ See, e.g., *Gordon v. Pete’s Auto Serv. of Denbigh, Inc.*, 838 F. Supp. 2d 436 (E.D. Va. 2012); *Wigham v. Chase Auto Fin. Corp.*, 826 F. Supp. 2d 914 (E.D. Va. 2011).

⁵¹ *Id.* § 537(a)(1).

⁵² *Id.* § 537(a)(2) (emphasis added).

⁵³ *Wigham*, 826 F. Supp. 2d at 919 (“Congress intended for § 532 to govern installment contracts, and since Defendant’s lien arose out of an installment contract entered into by Plaintiff, § 532 governs Plaintiff’s claim.”).

⁵⁴ *United States v. B.C. Enters. Inc.*, 667 F. Supp. 2d 650, 654 (E.D. Va. 2009) (“Cooper is not a ‘person holding a lien on the property or effects of a servicemember’ within the meaning of § 537(a)(1), and thus his conduct cannot constitute a violation of that statutory provision.”).

⁵⁵ *Villanueva v. Cyprex Servs., LLC*, No. D060860, 2013 WL 1779311, at *10 (Cal. Ct. App. Apr. 26, 2013) (“Here, Cyprex’s involvement was limited to the sale of plaintiffs’ personal possessions. There is no allegation that Cyprex held a storage lien or any other type of lien.”).

⁵⁶ 50 U.S.C. app. §§ 451-473 *et seq.*

⁵⁷ *Id.* § 516; see also *Clements v. McLeod*, 155 Fla. 860, 865, 22 So. 2d 220 (1945).

⁵⁸ Militia Act of 1903, 32 Stat. 775.

⁵⁹ See 32 U.S.C. § 101.

⁶⁰ Qualifying active duty under the SCRA includes two different types of orders: active duty orders under 10 U.S.C. § 101(d)(1), and active duty orders under 32 U.S.C. § 502(f) which call the individual to active duty authorized by the President or Secretary of Defense, calling the servicemember to active duty for more than 30 consecutive days for purposes of responding to a national emergency as declared by the President and supported by federal funds. 50 U.S.C. app. § 511(2). Note that individuals who are called to active duty under state orders — or non-qualifying federal orders — are not entitled to SCRA benefits.

⁶¹ 50 U.S.C. app. § 516(a).

⁶² *Id.*; accord *Soldiers' and Sailors' Civil Relief Act and Veterans' Reemployment Rights: Joint Hearing before the H. and S. Comms. Veterans Affairs*, 101st Cong. (1990); 1990 Hearing on Pub. L. 102-12, at 268-69 (1990) (“An individual ordered to report for induction is within the purview of section 106 [codified at Section 516] even though the induction process has not been completed.”).

⁶³ *Servicemembers Civil Relief Act: Hearing on H.R. 4763 Before the H. Comm. Veterans Affairs*, 102nd Cong. (1992) (statement of the American Bankers Association).

⁶⁴ See, e.g., *United States v. Ryan*, 284 U.S. 167, 174 (1931) (“It is said that the construction urged by the government is inadmissible because so broad as to lead to absurd results.... To do so would be to justify penalties having no relation to the offense, and the infliction of hardship on innocent persons unnecessary for the protection of the revenue. All laws are to be given a sensible construction. A literal application of a statute which would lead to absurd consequences is to be avoided whenever a reasonable application can be given which is consistent with the legislative purpose.”).

⁶⁵ *Burnet v. Guggenheim*, 288 U.S. 280 (1933); see also *Knowlton v. Moore*, 178 U.S. 41, 77 (1900) (“[W]here a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute”); *Wilson v. Rousseau*, 45 U.S. 646, 680 (1846) (“[A] court should hesitate before giving a construction to the clause so deeply harsh and unjust in its consequences, both as it respects the public and individual rights and interests.”).

⁶⁶ 50 U.S.C. app. § 514.

⁶⁷ *United States v. B.C. Enters. Inc.*, 667 F. Supp. 2d 650, 654 (E.D. Va. 2009).

⁶⁸ Press Release, United States Department of Justice, Justice Department Settles Towing Company Case Under the Servicemembers Civil Relief Act (May 1, 2012). The same federal district court again noted in dicta two years later that Section 537 of the SCRA is a strict liability statute, *Gordon v. Pete's Auto Service of Denbigh, Inc.*, 837 F. Supp. 2d 581, 585 (E.D. Va. 2011), but the defendant in *Gordon* conceded liability, so the issue of strict liability was not before the court.