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Santander Consumer USA Required To Pay \$9.35M for Illegally Repossessing the Vehicles of Service Members

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4.3—SCRA right to continuance and protection against default judgment

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Navy Times has reported³ that Santander Consumer USA (one of the nation's largest motor vehicle lenders) will pay at least \$9,350,000 to service members whose vehicles were illegally repossessed by Santander,⁴ in violation of the Servicemembers Civil Relief Act (SCRA). These payments are to fulfill Santander's obligations under a settlement Santander reached with the United States Department of Justice (DOJ), which had sued Santander in the United States District Court for the Northern District of Texas (Dallas). The service members affected by this settlement are all over the country, not just in Texas.

In April 1917 the United States entered World War I. Millions of "doughboys" (and a few thousand "doughgirls") entered active military service, by draft, by voluntary enlistment, or by call-up from the nascent Army National Guard, Army Reserve, Naval Reserve, and Marine Corps Reserve. While in boot camp and then on the front lines in France, they could not attend to civilian legal matters back home.

In 1917, John Henry Wigmore was the Dean of the Northwestern University School of Law and already a distinguished legal scholar—the first edition of *Wigmore on Evidence* was published in 1905. He volunteered to come on active duty as a Major in the Army's Judge Advocate Department. In a matter of days, he drafted the Soldiers' and Sailors' Civil Relief Act (SSCRA), and Congress quickly enacted his handiwork into law.

The original SSCRA applied during the period of national emergency that began when the United States entered World War I and ended in 1919. In 1940, as the United States

¹ We invite the reader's attention to www.servicemembers-lawcenter.org. You will find more than 1,300 "Law Review" articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

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³ *Navy Times*, March 16, 2015, page 13 (article by Karen Jowers).

⁴ According to the *Navy Times* article, Santander is required to pay \$10,000 plus compensation for any lost equity, with interest, to each service member whose vehicle (760 vehicles included) was allegedly repossessed without a court order.

contemplated the possibility of entering World War II, Congress enacted a new SSCRA that was almost identical to the first one. After World War II, when it became clear that our country would need a large military establishment in peacetime as well as wartime, Congress made the SSCRA permanent.

The SSCRA served our nation well through two world wars, the Korean War, the Vietnam War, and the long Cold War, but by the time of the 1990-91 Persian Gulf War, when Reserve Component (RC) personnel were involuntarily called to active duty in significant numbers for the first time since the Korean War, this law was showing its age and needed updating. Situations that Major Wigmore could not have anticipated in 1917 (like leasing an automobile instead of buying it) necessitated changes in the law.

Through the 1990s, judge advocates of the five armed forces (Army, Navy, Marine Corps, Air Force, and Coast Guard) came up with proposals to improve upon the SSCRA. Finally, in December 2003 Congress enacted their handiwork, and the new law is called the Servicemembers Civil Relief Act (SCRA). The SCRA is codified in the Appendix of Title 50 of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501-597b).

Section 302 of the SCRA provides as follows:

§ 532. Protection under installment contracts for purchase or lease

(a) Protection upon breach of contract.

(1) Protection after entering military service. *After a servicemember enters military service, a contract by the servicemember for--*

(A) the purchase of real *or personal property* (including a motor vehicle); or

(B) the lease or bailment of such property,

may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach *without a court order*.

(2) Applicability. This section applies only to a contract for which a deposit or installment has been paid by the servicemember *before* the servicemember enters military service.

(b) Misdemeanor. A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act, or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or *imprisoned* for not more than one year, or both.

(c) Authority of court. In a hearing based on this section, the court--

(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity

require; or

(3) may make other disposition as is equitable to preserve the interests of all parties.

50 U.S.C. App. 532 (emphasis supplied).

This section means that it is unlawful for a creditor to repossess property of an active duty service member *without a court order* under a loan agreement that an individual signed *before entering active duty*. This section applies to real property, like a house, but it also applies to personal property, like a vehicle.

For example, this section applies to Mary Jones, who was a petty officer in the Coast Guard Reserve (not on active duty) when she took out a loan to buy a car and *after* taking out the loan entered active duty voluntarily or involuntarily. This section also applies to Joe Smith, who had no military status when he took out the loan to buy a car and who later (before repaying the loan in full) enlisted in the Army and reported to basic training or Officer Candidate School. This section does not apply to Bob Williams, who was already on active duty when he took out a car loan.

Creditors and vehicle repossession companies need to establish procedures to check on the military status of each person whose vehicle is to be repossessed, *before* attempting to repossess the vehicle. Any person or corporation that repossesses a vehicle unlawfully faces a real prospect of both criminal and civil liability.

The Department of Defense (DoD) has a *free* online service to look up if someone is on active duty for the purposes of SCRA. The website is: https://www.dmdc.osd.mil/appj/scra/single_record.xhtml. This website allows you to see if a named individual is/was on active duty at a specific date. This is a free service. All that you need is the individual's Social Security number, date of birth, and last name.

The DoD also has a *free* online service for looking up multiple people or multiple dates for one person all at the same time. To use this service you must first create a DoD account (also free). If you plan on using this service several times, it is worthwhile to get an account. The website is: https://www.dmdc.osd.mil/appj/scra/multiple_record.xhtml.

This service provides information about the active status of persons in the Coast Guard (in the Department of Homeland Security), the commissioned corps of the Public Health Service (in the Department of Health and Human Services), and the commissioned corps of the National Oceanic and Atmospheric Administration (in the Department of Commerce)⁵, as well as the four DoD services (Army, Navy, Marine Corps, and Air Force).

⁵ The SCRA explicitly applies to persons in all seven uniformed services, including the commissioned corps of the Public Health Service and the commissioned corps of the National Oceanic and Atmospheric Administration. See 50 U.S.C. App. 511(2)(B).

For example, let us say that Mary Jones was a petty officer in the Coast Guard Reserve, not on active duty, when she took out a loan with Santander (or any other bank, credit union, or loan company) in July 2014. Jones entered active duty (voluntarily or involuntarily) in December 2014. Santander believes that Jones has missed several payments, and the company seeks to repossess the vehicle in March 2015, after Jones has entered active duty. Because Jones is on active duty when the company seeks to repossess the vehicle, although she was not on active duty when she took out the loan, Santander is forbidden to use self-help to repossess the vehicle.

In this situation, if Santander wants to repossess the vehicle it must sue Jones in state court. In such a lawsuit, Jones has important rights under sections 201 and 202 of the SCRA, 50 U.S.C. App. 521 and 522. If Jones is on active duty at a place distant from the location of the lawsuit, and if her commanding officer certifies to the court that her military duties preclude her participation in the court proceeding, Jones is entitled to a continuance of at least 90 days, and additional continuances in the discretion of the court, until her military duties no longer preclude her participation in the proceeding. 50 U.S.C. App. 522(a).⁶

In any civil lawsuit in any court in the United States (federal or state), it is necessary as a condition precedent to obtaining a default judgment that the plaintiff aver to the court, under oath, that the defendant is or is not on active duty or in active service in one of the seven uniformed services. 50 U.S.C. 521(b)(1).

For example, let us say that I have sued Melissa Williams in state or federal court—this could be a suit on an asserted debt, or a personal injury case, or a civil case of any kind. Let us say that in the state in question a defendant has 60 days to file an answer to a lawsuit, after having been served with process. The 60 days has passed, and Williams has not filed an answer. If I file an affidavit with the court stating under oath that Williams is not a service member on active duty or in active service,⁷ I can then obtain a *default judgment* against Williams. I sued her, and she failed to respond within the time permitted by law, so I win.

If I file an affidavit to the effect that Williams is not on active duty, without having made a reasonable effort to ascertain her military status (if any), I am guilty of a federal misdemeanor, punishable by fine and imprisonment for up to one year. 50 U.S.C. 521(c). At a minimum, I must utilize the free DoD service described above, to determine if Williams is on active duty. All too often, attorneys file affidavits stating that the defendant (against whom a default judgment is to be awarded) is not on active duty, even when the defendant is on active duty.⁸

⁶ The North Carolina Supreme Court recently issued a public reprimand to Judge Brenda G. Branch for flouting these SCRA requirements. Please see Law Review 15019.

⁷ The term “active service” applies to members of the Public Health Service commissioned corps and the National Oceanic and Atmospheric Administration commissioned corps. See 50 U.S.C. App. 511(2)(B).

⁸ Please see Law Review 1048, concerning the James Hurley case. The “foreclosure mill” law firm repeatedly filed affidavits stating that Hurley was not on active duty, when in fact he was on active duty in Iraq. The paralegal who prepared and signed these affidavits, as directed by the attorney, testified that he prepared and signed the

How the SCRA is enforced

Section 801 of the SCRA gives the United States Attorney General (DOJ) the authority to sue any person or corporation that violates the SCRA in a systematic way. Here is the text of that section:

§ 597. Enforcement by the Attorney General

(a) Civil action. The Attorney General may commence a civil action in any appropriate district court of the United States against any person who--

- (1) engages in a pattern or practice of violating this Act; or
- (2) engages in a violation of this Act that raises an issue of significant public importance.

(b) Relief. In a civil action commenced under subsection (a), the court may--

- (1) grant any appropriate equitable or declaratory relief with respect to the violation of this Act;
- (2) award all other appropriate relief, including monetary damages, to any person aggrieved by the violation; and
- (3) may, to vindicate the public interest, assess a civil penalty--
 - (A) in an amount not exceeding \$ 55,000 for a first violation; and
 - (B) in an amount not exceeding \$ 110,000 for any subsequent violation.

(c) Intervention. Upon timely application, a person aggrieved by a violation of this Act with respect to which the civil action is commenced may intervene in such action, and may obtain such appropriate relief as the person could obtain in a civil action under section 802 with respect to that violation, along with costs and a reasonable attorney fee.

The *Navy Times* article explains how DOJ became aware of Santander's unlawful practices: "Justice officials said they first learned of Santander's practices through a referral from the Army's legal assistance program. That referral involved a claim that Santander illegally repossessed the car of 19-year-old Specialist Joshua Davis, of Casselberry, Florida, in the middle of the night, after being told he was at basic training."

I congratulate DOJ for having brought this lawsuit and for having obtained excellent relief for Specialist Davis and hundreds of other affected service members.⁹

affidavits exactly as directed by the attorney, without making any effort to ascertain Hurley's military status, and that he (the paralegal) did not know what "active duty" meant.

⁹ Section 802 of the SCRA, 50 U.S.C. App. 597a, creates an explicit private right of action and provides for the recovery of court costs and attorney fees for a plaintiff who retains private counsel and sues to enforce SCRA rights. That is another way to obtain relief under this law.