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Don’t Move That Metal: SCRA Lessons From a Costly Settlement

SPEAKERS

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In this episode of *Moving the Metal: The Auto Finance Podcast*, hosts Brooke Conkle and Chris Capurso break down a recent DOJ/U.S. Attorney’s Office settlement with a lease-here, pay-here dealership over violations of the Servicemembers Civil Relief Act (SCRA). They discuss the two provisions at the heart of the case, repossession protections and lease termination rights, and the way a dealer’s failure to check military status and refund lease payments led to a $137,348 penalty and a robust, DOJ-approved compliance overhaul. Brooke and Chris explain why SCRA enforcement remains a bipartisan, well-funded priority (nearly $500 million recovered since 2011) and offer practical steps dealers and auto finance companies should take now, including mandatory DMDC database searches, documented military-orders intake procedures, thorough recordkeeping, and designated, trained SCRA points of contact. Tune in for a real-world roadmap of what regulators expect dealership compliance programs to look like.

Transcript

Podcast: *Moving the Metal: The Auto Finance Podcast*
Episode: Don’t Move That Metal: SCRA Lessons From a Costly Settlement
Hosts: Brooke Conkle and Chris Capurso
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Brooke Conkle (00:10):
Welcome to *Moving the Metal*, the premier, legally focused, podcast for the auto finance industry. I’m Brooke Conkle, a partner in Troutman Pepper Locke’s Consumer Financial Services Practice Group.

Chris Capurso (00:21):
And I’m Chris Capurso, of counsel in Troutman Pepper Locke’s Consumer Financial Services Practice Group.

Brooke Conkle (00:26):
Today, we’ll be discussing a recent settlement under the Servicemembers Civil Relief Act. But before we jump in, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you: TroutmanFinancialServices.com, and ConsumerFinancialServicesLawMonitor.com. And also, we have a bevy of other podcasts that you might find interesting: *The Consumer Finance Podcast*, which, as you might guess, is all things consumer finance related; *The Crypto Exchange*, devoted to trends, challenges, and legal

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For today, as I mentioned, we'll be talking about a recent settlement under the SCRA. And Chris, the settlement isn't just about one dealership. It's a roadmap of what the DOJ looks for, what goes wrong operationally, and what dealers need in place right now. But Chris, set the stage. What is the SCRA, and why does it apply to dealers?

Chris Capurso (02:19):
Yes. And as you mentioned, SCRA is Servicemembers Civil Relief Act. And it's really unfortunate that there is an SCRA acronym, and an FCRA acronym, the Fair Credit Reporting Act, too, that are very prevalent in the auto finance industry. For purposes of today's podcast, anytime you hear SCRA, even if it sounds like I'm saying FCRA, we are talking about the Servicemembers Civil Relief Act. Just wanted to clear that up if the intro wasn't enough to get that one across.

The SCRA provides broad legal and financial protections to active duty service members and their dependents. The goal of the SCRA, is to ensure military service doesn't cost someone their financial stability at home. There are some very common provisions that we think of. We think of the interest rate cap, which is the 6% per year cap on obligations incurred by a service member before they enter military service, and obviously, the cap applying during the period of military service. And we also think of the repossession protections. Talk about that a little bit more in a minute. Because this specific action has nothing to do with the rate cap, which is one of the bigger ones; not in this one. Because this is really centered on leases, which is a big part of the SCRA, but it's not one that we hear about quite as much. We definitely hear about it in residential leases, but this is vehicle leases. And there's two provisions that are really centered on in this settlement.

The first, as I noted, is repossession protection. You cannot repossess a service member's vehicle during military service without a court order, as long as the service member made a deposit, or at least one payment before entering service. So no court order means no repossession, period. The second one, being the lease termination right, that service members with qualifying orders, deployment of 180 days plus, or a permanent change of station, may terminate a motor vehicle lease early without penalty. The dealer must refund security deposits, advanced lease payments, and other payments of the like, within 30 days of the effective termination date. So those are the big provisions at play here. And obviously, those are where the dealer, in this case, really ran into trouble. So, Brooke, what did they do?

Brooke Conkle (04:32):
Chris, you're exactly right. It's those two categories of prohibitions where the dealer ran into trouble. The dealer

was a, Lease-here, Pay-here dealership, with in-house financing, and had locations in Mississippi, Alabama, and Georgia. And in particular, the DOJ Civil Rights Division, and the U.S. Attorney's Office for the Northern District of Alabama, investigated the dealership and found violations in both categories. Now, starting with repossession violations, the U.S. Attorney's Office found three instances of repossession violations. One, three service members had their vehicles repossessed without a court order. There were, frankly, not great facts here for the dealership. In at least one case, the service member had provided the dealer with her military orders. She was deploying in support of Southern Border Operations, and the repossession still happened. So this wasn't really ignorance of the customer's status. The dealer had the information in hand, but it's a case of the left hand not knowing what the right hand's doing. And for purposes of enforcement, the optics don't look good, as we say, Chris.

For lease termination violations, the DOJ and U.S. Attorney's Office, listed five instances. Five service members exercised their SCRA right to early lease termination. The dealer did not refund security deposits and prepaid lease amounts within the required 30-day window. So with five instances, the DOJ found that this was a systemic failure, not a one-off. Regulators can treat repeated violations of the same type, essentially, as indicative of a compliance program problem, not an individual mistake, where things just went wrong. The settlement really reflects both the financial consequences and the structural remediation that the DOJ requires when it finds systemic failures. Now, Chris, let's talk turkey. What does the money look like?

Chris Capurso (06:36):
Yeah. This is exciting. I get to talk about the money this time. So in, *Moving The Metal* fashion, let's talk dollars. There's three buckets to categorize the funds into. First, and probably the easiest to explain, is there is a $60,000 civil penalty. So that's just the penalty for the violations. Then we've got to talk compensation, and that's, in total, $77,348 for compensation to the service members. And those are, kind of, into some specific buckets. First, for three of the service members, there's just compensation for the repossessions, which is $15,000 each. And then for the lease termination consumers, they get a full refund of their security deposit, advance payments, and capitalized cost reduction payments, plus three times that amount as punitive damages. It's a multiplier of that. So all that together, for all the violations that we've discussed, equals the $60,000 plus $77,348, which adds up to $137,348. I feel like I'm on Jeopardy! Calculating somebody's Final Jeopardy! Winnings. That is absolutely not what is happening here. Nobody won anything here.

And then there's also compliance obligations. Which are really, honestly, the meat of the order. I mean, there's obviously payment, but the compliance pieces of it are huge. At the forefront of that, is that the dealer is required to create SCRA policies and procedures for motor vehicle repossessions that comply with the SCRA. And huge among this, is the fact that the dealer needs to check, basically, any military service information provided by lessees, and conduct searches of the Defense Manpower Data Center, the DMDC, no more than two business days before referring a vehicle for repossession, no more than two business days after the repossession has occurred, and… That's important… And no more than two business days before the vehicle is sold or disposed of.

So lots of required checks of the DMDC database. You got to do it before referring the vehicle for repossession, after the repossession has occurred, and before the vehicle is sold. If any of the information, either received directly by the dealer, or via those DMDC searches, indicates that the lessee is an SCRA-protected service member, the dealer must not refer the vehicle for repossession, or repossess the vehicle without first obtaining a court order, or a waiver of the right. And the settlement actually includes a waiver. And this is actually pretty common in these SCRA orders, to include this base form for the waiver. If the dealer learns that the lessee, or co-lessee, is, in fact, an SCRA-protected service member after repossessing the vehicle but before the vehicle is sold or disposed of… So that was one of the DMDC search instances, was after repossession but before sale… Within 24 hours, the dealer must attempt to verbally contact the service member and offer to arrange to return the vehicle, and must reverse all charges on the account resulting from the repossession, and correct any negative credit reporting related to the repossession.

And that's just on the, "shall attempt to contact." If they cannot make contact with the service member within 24 hours, the dealer shall cause the vehicle to be returned to the location where possession was taken, unless: one, returning it presents a significant risk of damage to the vehicle; two, returning it presents a significant risk that the vehicle will be impounded; three, the service member has previously informed the dealer that they've abandoned the vehicle; or four, the vehicle was recovered under circumstances that would suggest that the vehicle was abandoned. So you got some abandonment-based exceptions, and also exceptions based on, "If we put it back in the place where we found it, that collateral is probably not going to be the same value that it was when we first took it." If the vehicle is not returned to the service member within 24 hours, the dealer has to make at least three additional attempts to reach the service member based upon the contact information that they have on file, and return the vehicle within 24 hours of a lessee's, or co-lessee's, request for return, again, without charging any repossession-related fees. And the vehicle must not be sold, or otherwise disposed of, until the contact attempts referenced, have been made, and there has been a court order, or a valid written waiver.

So there's a lot of contact obligations, with some exceptions. A lot of obligations to check the DMDC database. And this is all just related to, "Should we return the car? Are we allowed to sell it?" It's a lot of compliance obligations to have to deal with, specifically, based on the protections provided by the SCRA. If the dealer attempts to obtain a court order authorizing repossession, it must file an affidavit that complies with the SCRA. And the dealer, if they take possession of a vehicle that has been impounded by an unrelated third party, upon receiving notice of the impoundment, they can take possession of that vehicle, but they still must provide notice to the service member that it has taken possession, and can't dispose of it until they've made those reasonable efforts to contact the service member. So basically, building in just a lot of touchpoints where the dealer has to contact the service member, basically, just to prevent these kind of improper repossessions, improper sales, things like that. It's going to be baked into the policy.

The dealer has to send that for approval to the DOJ. So you have to write all those policies, and then make sure that the DOJ signs off on it. They have to designate customer service representatives who have been specifically trained on the SCRA, so that if any service members call asking about their rights, there are customer service representatives that can explain exactly what those rights are, and what the process will look like. Which, as I've just described, is very involved. So you're going to need to have good training in place, at least this dealer. And obviously going forward, that's kind of a lesson for later, but you would need to have somebody there who actually understands what is going on.

The dollar amount isn't huge, especially compared to what we've been looking at. It wasn't a ton of victims, to be frank. But $137,000 penalty isn't something that we usually go, "Oh my God! That moves the needle" type stuff. But these types of compliance requirements, after the fact, these types of things that the DOJ expects this dealer, and all dealers, really, to have in place, is really the main focus. And these are the types of things that we see in these SCRA actions from the DOJ. But Brooke, we said, this is an isolated incident with obviously a lot of compliance obligations. What does this mean for the broader enforcement context?

Brooke Conkle (13:29):
Yeah. And Chris, if we've said it once, we've said it a million times. No matter who is in the White House, no matter who is sitting in the Attorney General's chair in your state, service member related issues are always going to be a high priority. It is evergreen content for both parties. Everyone is always looking out for members of the military. The DOJ has been active in SCRA enforcement, and the auto sector, in particular, is a consistent focus. Since 2011, really, no matter who has been in the White House, the DOJ has obtained close to $500 million for over 150,000 service members through SCRA enforcement. This is a sustained and well-resourced priority. Again, no matter who is in charge, this is always going to be important. There are major auto finance companies that have been involved in SCRA actions in this space. If you have volume, you've got exposure.

The U.S. Attorney, in this particular case, himself is a 30-year veteran. He was direct in his public statement that dealerships who treat the SCRA as optional, should expect to hear from his office. So this is not a boilerplate sign-off in an SCRA order. This is a genuine warning. So if you are doing business, this is a law that regulators, and the DOJ, and your state officials, are going to expect you to treat as a priority.

Chris, just as you mentioned, the money here is not the headliner. The headliner is the compliance requirements. And just as you mentioned, these compliance requirements, they're not considered punitive measures by the DOJ. These are considered to be, essentially, what dealerships need to be doing, dealerships and auto finance companies, when it comes to repossession and lease termination. These are the kind of checks that a DOJ… Even a DOJ that is considered business-friendly… This is what you are expected to be doing. That's not to suggest that there is not a private litigation risk. SCRA violations can generate private lawsuits entirely separate from DOJ enforcement. A service member whose vehicle was wrongly repossessed, they've got their own cause of action.

We've talked about the consent order itself. It's got some meaty terms in there: three-year monitoring period, broad DOJ inspection rights, ongoing reporting obligations. Avoiding that kind of consent order, frankly, that, in and of itself, is motivation for compliance. So Chris, tell us a little bit about what we need to do now. What are our practical takeaways?

Chris Capurso (16:15):
I think, first and foremost, policies and procedures are vital. Honestly, folks should be looking at these types of orders as a hint, in a way, right? It's the same way we always talk about looking at your complaints, as kind of an opportunity to correct things before somebody else tells you to. In this case, we have a roadmap for exactly what policies and procedures should look like under the SCRA. I mean, the DOJ gives the exact steps that should be taken.

So I have policies and procedures in place that mirror this. Because, again, dollars, you may look at it and be like, "$100,000, that's not a big deal." I mean, if your operations are big enough, those can get huge. As Brooke said, the penalties recovered in the last 15 years, they total up. But the other part of this is reputational damage is enormous with these types of actions. We're not going to say the names of these people, but the press releases do, right? Just having that out there as a service member kind of issue, you just don't want it. You want to have the policies and procedures in place to head that off before it happens. So key among that, and very heavily emphasized by the DOJ, run those DMDC searches every time. In all the instances that they said, right at origination… Like, they are free. You can run them for free. And there's just no excuse for skipping it.

One of the common ways to skip it, is to just not have it written down in a procedure where it's just ad hoc, you're going to run them wherever they need to be. Have a detailed procedure that says exactly where in the process you're going to run these things, so that it's part of the way of life. It's part of the way you do business. And that can help mitigate these kinds of risks, because the chances of somebody slipping through the cracks are going to be mitigated pretty significantly if you run these consistently at the right times. Build in a protocol for receiving military orders. If the consumer sends them along, you don't want that to end up in a random mailbox, or something to that effect. You want to have designated, who's going to receive this, where is it going to go, how are these going to be forwarded, when do the protections get implemented, all those types of things. You just want to have that in place so you're not surprised when you get something like that, or even worse, that you never got it because it went to some mailbox that's not being monitored.

In addition, we're talking about documentation on the front end. On the back end, you want to have documentation of what you've been doing for each consumer. These kinds of searches, save a PDF, print it out if you're into paper. Do all those types of things just to make sure there is a trail of what you have done, to show that you have good procedures in place, and that you are following them. So if this type of thing comes up again, you'd be like, "Whoa, whoa! We checked on X date. It didn't show up." It's the "show your work" method, right? Just make sure that you explain exactly what you did, that you were following your procedures. And then there's less of a chance, again, for something to slip through the cracks.

Another important one that was brought up in the settlement agreement, is just having a point of contact for SCRA issues. As I noted previously, this is complicated. I mean, there's a lot of different protections. They come in in different areas. They can apply to dependents depending on the protection. I mean, there's just a lot going on with the SCRA. And having somebody trained to be able to handle those kinds of questions, can mitigate complaints. If a service member calls and doesn't get the response they want, that could just lead to more complaints, that could lead to more scrutiny. As Brooke said, people are looking at this. So just anything you could do on your end, to try to just lessen that risk, is huge. And having somebody trained who can actually answer those questions is very important. So from the compliance standpoint, just take this order… Any orders that come out on the SCRA from the DOJ, as just a roadmap for what you should be doing, and how to comply.

And I know, we have clients who, after each one of these orders come out, they call and ask, "Are we buttoned up in line with this kind of order?" And I think that's the right thing to do. You want to take these as the opportunity to make sure everything is up to snuff, and that all your policies and procedures, one, align with the SCRA, and that two, all of your operations actually align with those policies and procedures so that you're following them.

And with that, we'll wrap it up for today's podcast. Thank you to our audience for tuning in. Don't forget to check out our blogs, where you can subscribe to the entire blog, or just the specific content you find most helpful. That's the ConsumerFinancialServicesLawMonitor.com, and the TroutmanFinancialServices.com blogs. And while you're at it, why don't you head on over to troutman.com and sign up for our Consumer Financial Services mailing list, so that you can stay abreast of current issues with our insightful alerts and advisories, and receive invitations to our Industry Insider webinars.

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