

The Consumer Finance Podcast – Navigating the Servicemembers Civil Relief Act: Protections and Litigation Trends

Host: Chris Willis

Guests: Jason Manning and Carter Nichols

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Chris Willis (00:05):

Welcome to [The Consumer Finance Podcast](#). I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services regulatory practice, and today I'm joined by two of my litigation colleagues to talk about a very hot issue, and that is the Servicemembers Civil Relief Act. But before we jump into that very important topic, let me remind you to visit and subscribe to our blogs, [TroutmanFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#). And don't forget about all of our other great podcasts, the [FCRA Focus](#), all about credit reporting, [The Crypto Exchange](#), about everything crypto and digital assets, [Unauthorized Access](#), which is our privacy and data security podcast, [Payments Pros](#), all about the payments industry, and of course, our auto finance podcast called [Moving the Metal](#). All of those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and let us know how we're doing. Now, as I said, today we're going to be talking about the Servicemembers Civil Relief Act, or the SCRA, not to be confused, of course, with the FCRA, which we also talk about a lot on this podcast. And joining me to talk about that are two of my consumer financial services litigation colleagues, Jason Manning and Carter Nichols. Jason, Carter, thanks for being on the show today.

Jason Manning:

Glad to be here, Chris.

Carter Nichols (01:18):

Thanks for having us.

Chris Willis (01:19):

I'm so glad to have the two of you back and really interested to have this conversation with you. So, we're going to cover a lot of the nuts and bolts of what the SCRA provides and how people can get into trouble under it. But before we jump into that detail, why do you think this is an important time for us to be having this episode?

Jason Manning (01:36):

We're seeing a lot of new litigation, particularly class action litigation in this space.

Chris Willis (01:42):

Okay, then that's an important enough reason to have it. But I would add on top of that, that protecting the rights of servicemembers has been one of the most publicly stated consumer protection objectives of the current presidential administration. So, we've seen statements from the CFPB about it, from other federal regulators, and we're seeing ongoing activity with the Department of Justice Civil Rights Division on servicemember protection cases. So, this is, I think, a very timely issue both on the litigation and on the compliance side. So, let's talk about the nuts and bolts of the SCRA and how it works. So, let's just start off. What is the SCRA?

Jason Manning (02:16):

The SCRA is a federal law that provides various legal protections to active duty military members, reservists, members of the National Guard, and it's all circumstantial. Its purpose is to ease financial burdens and allow servicemembers to focus on their duties without worrying about certain civil obligations.

Chris Willis (02:36):

And so obviously, if we're going to talk about the SCRA, we need to talk about who it protects. So, who does the SCRA protections apply to?

Jason Manning (02:45):

Very broadly speaking, SCRA protections apply to active duty members and active duty is a very key legal term, which we'll discuss further, but active duty members of Army, Navy, Air Force, Marine Corps, Coast Guard, as well as reservist and members of the National Guard, the latter category when they're on active duty.

Chris Willis (03:06):

Got it. Having understood that the SCRA generally gets triggered by active duty when it is triggered, what kind of protections does the statute give to servicemembers who are in active duty?

Carter Nichols (03:17):

The SCRA offers a range of protections that includes reduced interest rates on pre-military service debts. So, if you have a mortgage, the SCRA caps the interest rate at 6%. It also applies to credit card student loans and other financial obligations that servicemembers have entered into prior to the start of their military service. It protects servicemembers from eviction, gives them a delay in court actions. So, if there's some sort of civil hearing, not necessarily just evictions or foreclosure, but any sort of court hearing, they have a right to have that delayed until the end of their military service. It also provides the ability for servicemembers to terminate leases, that includes residential and auto leases, and also provides protections against foreclosure or repossession. And as Jason said, I mean all of this is really designed to allow

servicemembers to focus on their military service, the task at hand, and not have to worry about some of the financial or other obligations they might have at home.

Chris Willis (04:29):

Okay. So, we've got these array of protections for servicemembers, but do the servicemembers have to do anything to invoke these rights or are they automatic?

Jason Manning (04:38):

They have to communicate. Servicemembers have to provide a written notice and a copy of their military orders. And again, military orders is a term of art, which we can talk about more, but those two pieces are critical and must be provided to the creditor or landlord in order to invoke the SCRA rights.

Chris Willis (04:55):

I know that's true for the interest rate protection and for the termination of leases, but my recollection was that for the foreclosure and repossession rights, that didn't require the servicemember to give notice. Is that right?

Carter Nichols (05:09):

You're right, Chris. Mortgages and residential leases, really any sort of housing situation is sort of unique for the SCRA. As you might know, creditors, landlords, they are able to use the Department of Defense Manpower Database to conduct checks to see whether or not SCRA protections apply to an individual. And typically, as part of any sort of foreclosure filing or an eviction, the creditor or the landlord, whoever's bringing that action, would have to certify to the court that the individual is not protected by the SCRA. So, in that instance, there is an affirmative duty to check before those actions can proceed. Whereas with the interest rate limitation or a voluntary termination of a lease, notice is required by the servicemember.

Chris Willis (06:02):

Yeah, right. Carter, and the same thing you said with respect to residential mortgage servicing is also true of auto loans. So, strict liability, if you repossess an active duty servicemember's car, and so the burden is on the creditor to check the DMDC database before the repossession happens, and then before the car is sold also to make sure that the person's not on active duty. Now, one thing though that may be a source of confusion for some of our listeners is there's two servicemember protection statutes at the federal level. There's the SCRA, which we've been talking about so far, but then there's this other one called the Military Lending Act. What's the difference between the two of them?

Jason Manning (06:37):

SCRA and the MLA both offer financial protections to members of the military, but SCRA is primarily focused on protections that arise after someone already has a financial obligation.

Whereas, the MLA mostly concerns protections that apply at the outset of the relationship between a creditor and military member, meaning the status at the time they enter into the financial obligation.

Chris Willis (07:02):

Got it. Does the MLA cover the same individuals as the SCRA or is the scope of the people covered by it different?

Carter Nichols (07:08):

The MLA covers both the covered member, which is again a term of art, which refers both to the servicemember and their dependents. And so the SCRA in some circumstances would by extension cover an dependent, so like a spouse who is on your mortgage with you could seek the interest rate limitation, for example, under the SCRA. But the MLA is, I would say, much broader in the sense that it covers specifically dependents alone, even if, for example, it is the dependent's debt individually rather than the servicemember.

Chris Willis (07:48):

Right. And as I recall, there's actually two different spots on the DMDC database, one that gives you an SCRA search for people who are covered by the SCRA and the other one who will include the dependents in a sort of MLA search. Is that right?

Jason Manning:

That's right, Chris.

Chris Willis:

Both of these statutes and the SCRA in particular, as we've been talking about, focus a lot on whether a person happens to be on active duty at the time. So, what does that mean? What does it mean to be on active duty and thus protected by the Servicemember Civil Relief Act?

Jason Manning (08:20):

Active duty can be straightforward or complicated. Most of the time it's straightforward. In the case of your ordinary member of the military, whether that's Army, Air Force, et cetera, who's serving pursuant to Title X, that's active duty. Title X is the typical way of designating that. But in the case of the National Guard, it can be more complicated. Obviously with the National Guard, there may be different start times. Reservists are similar, but the definition of active duty explicitly excludes full-time National Guard under Title X. Thus, we bring this interesting issue of unless activated under Title X by the president, the only other type of order that constitutes military service for a National Guardsman, are under title 32, 32 USC 502F. And that's authorized by the President for the purposes of responding to a national emergency declared by the president and supported by federal funds. So, that's where you get into the more nuanced question, both timing and which orders under which title.

Chris Willis (09:35):

Got it. Thanks very much. Both the SCRA and the Military Lending Act are not new statutes. They've been around for a long time, but do you see litigation in this area picking up? And if so, why?

Jason Manning (09:47):

Well, I think part of it is because of the current administration's emphasis on protection of servicemembers. But the other piece of it is there was a case called *Loper* that dealt with agency deference. And so there's some new test cases where we're seeing lawsuits filed, for example, to test the applicability of DOD regulations. And they're trying to figure out, okay, is this an opportunity to change the scope or perhaps apply these statutes differently? So, I'll just give you two examples. Under the MLA, typically the issues are pretty limited. It's capping interest rates on credit products at 36%, prohibiting mandatory arbitration clauses and prepayment penalties, and requiring clear and understandable disclosures. So, the MLA has specifically in the statute delegated implementation authority to the DOD. So, there's some new litigation as to the scope and applicability of those regulations after *Loper*. And there's a lot of test cases now about timing. We talked about active duty at different times and when the debt or credit obligation originated because the MLA is triggered on that obligation was entered into at the time of active duty.

Chris Willis (11:11):

And Jason, speaking of those MLA regulations, one of the biggest sort of hot button issues under the law has been whether or not auto dealers can sell ancillary products in connection with the sale of a car. Because the MLA generally prohibits the sale of those products or would include them in the interest rate, the military APR, so to speak. But there's an exemption in the statute for a purchase money loan, like a purchase money loan to buy a vehicle. And the regulations have at different times taken different positions about whether a loan that is primarily a purchase money loan for a car, but also provides credit to buy an ancillary product, would be covered by that exemption in the statute. And the regulations have gone back and forth on that issue. So, it's been a source of controversy for a long time. And you're right now that *Loper Bright's* out there, there's every reason for litigants to want to challenge those regulations.

Jason Manning (11:58):

And the related set of cases we're seeing under SCRA is - obviously there's been litigation for years over the 6% interest rate limitation, and that's 6% all in whatever charges, everything. The challenges that we're seeing now, and that maybe because of the press that we're seeing over the usage of the National Guard. It's typically National Guard members and the timing and the orders that they're acting pursuant to, because it falls into that more nuanced analysis. Title X says it excludes full-time National Guard duty, but there's another way of being activated under Title 32. And so we're recommending to our clients that they refresh and update policies so that they're handling those things correctly.

Chris Willis (12:46):

Yeah, understood. And I'll just add to this that in addition to the surge in litigation that you're observing, as I said at the beginning of the show, protection of servicemembers is the most visible consumer protection priority of the current presidential administration. So, everybody in the consumer finance industry who may have members of the military as borrowers, has to be worried about this because it's the one thing we know that the administration says it will go after if it sees. And so I think it's a very timely topic that we have the opportunity to go through all the nuts and bolts of how both these statutes work on today's episode. So, Jason and Carter, thank you very much for being on the show today to talk about this. And of course, thanks to our listeners for tuning in as well. Don't forget to visit and subscribe to our blogs, TroutmanFinancialServices.com and ConsumerFinancialServicesLawMonitor.com. And while you're at it, why not visit us on the web at troutman.com and add yourself to our Consumer Financial Services email list. That way we can send you copies of our alerts and advisories that we send out, as well as the invitations to our occasional industry only webinars. And of course, stay tuned for a great new episode of this podcast every Thursday afternoon. Thank you all for listening.

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