

**LTC Cathey v. BancorpSouth
DAVID BEATS GOLIATH IN FEDERAL COURT**

By Col John S. Odom Jr., USAFR

4.1 Right to Interest Rate Reduction upon Mobilization

The holding in this case is of immense importance to every Reserve and Guard citizen-soldier. ROA's role in getting the case this far is one more example of the support provided to Reserve officers by ROA.

If there is the remotest possibility that your Reserve unit will ever get activated, reading this article could be the most important 10 minutes of your military career. Do you remember in all those deployment readiness briefings the information concerning the Soldiers' and Sailors' Civil Relief Act (SSCRA)? Do you remember what protections you have under the SSCRA? Be honest: The briefing was mind-numbingly boring and you weren't listening. Listen now. This is the story of how one Army Reserve officer persevered to enforce his rights under the SSCRA and how his fight might well protect other Reservists in the future.

For 28 years, I have been a judge advocate in the U.S. Air Force. During five years of active duty and more than 23 years of Reserve service, I've briefed the SSCRA in countless predeployment briefings. I have come to realize that few, if any, civilian attorneys and judges actually understand that under the SSCRA, the protections guaranteed to service members are a matter of federal law and that violations of the SSCRA are criminal acts.

In a lawsuit currently pending in federal court in Monroe, La., LTC Stewart A. Cathey, USAR, an ROA Life Member, has sued BancorpSouth Bank, a \$9.3 billion bank headquartered in Tupelo, Miss. Colonel Cathey claims that the bank violated his rights under the SSCRA in 1996–97 during a nine-month period when he had been activated for duty in Bosnia with the 412th Engineer Command.

In his civilian business, Cathey had built two gas station–convenience stores in 1995–96, both of which were financed by the defendant bank. The total amount of the bank debt was approximately \$850,000. Less than a month after the second station was completed, Cathey received notice on a Monday morning that on Friday he was being called to active duty and

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

would depart as an engineer operations officer for a deployment to Bosnia as part of Operation Joint Endeavor. He asked his unit to fax him a copy of his orders, which he delivered to his officer at the bank. He also notified the banker that under the SSCRA the bank was required to lower the interest rates on his loans to a maximum of 6 percent. The banker said that the bank would do whatever was required to comply with the law.

Although he had formed a Subchapter S corporation to build the stores, the bank had required Cathey and his wife to both personally sign the loans for the stores and to mortgage their residence as additional collateral for the loans. The promissory notes defined "borrower" as the corporation "and all other persons who sign the note."

Colonel Cathey then went off to do his duty. He left a retired family member in charge of the businesses, knowing that things would be really tough when he returned. This, however, was a risk that he had been willing to run as a citizen- soldier.

When Cathey returned from Bosnia, he discovered that his stores were in disastrous financial shape. He quickly reviewed the books and found that the bank had never lowered the interest rates on his loans from 11.5 to 6 percent, as required by the SSCRA. When he pointed that out to his bank officer and demanded a refund, he was told that the bank had loaned that money to his corporation and that a corporation was not entitled to protection under SSCRA. When Cathey pointed out to the banker that he and his wife had to personally sign each of the notes, the banker simply would not listen. The overcharged interest amounted to nearly \$50,000. If that had been refunded to him as soon as he returned home, Cathey would have been able to get the businesses back on their feet. It would still have taken two or three years to recover from the nine-month absence, but the businesses could have been saved.

The ensuing two-year horror story—involving bankruptcies, constant threats of foreclosure and complete inaction on the bank's part—is far too long to recount in this article. In the end, the bank never refunded the money, the stores both failed for lack of working capital, and the bank sued him to foreclose on the stores, which were ultimately seized and sold to the bank at sheriff's sale for pennies on the dollar. In the spring of 2000, when the bank started foreclosure on Cathey's home (remember the second mortgage on his residence the bank had required as additional collateral on the loans?), Colonel Cathey contacted me and asked whether anything could be done to stop the foreclosure on his home.

I had to hear the story several times before I realized the enormity of this case. Simply stated, what BancorpSouth Bank had done to Cathey was an egregious violation of a soldier's rights under the SSCRA. It presented the largest case for damages ever brought under the SSCRA, and the defendant was a very solvent bank.

We sued the bank in federal court because violations of federal law were involved. Cathey and I knew from the beginning that we faced a huge task of educating the court about the SSCRA because there is rarely any litigation under this law. I also learned that neither the judge nor any of his law clerks had any military experience. We decided early on that if we could get the

Pentagon and ROA to file "friend of the court" briefs, it might highlight for the court the importance of the case.

From the outset, the Army Reserve fully supported Colonel Cathey's efforts to enforce his rights. He made a formal request for their assistance, which went up through his chain of command and was favorably endorsed by LTG Thomas J. Plewes, chief, Army Reserve. That request then went into the halls of the Pentagon, and from there, over to the Department of Justice, which represents the Pentagon in all litigation.

Getting ROA involved was much easier. Mr. Jayson Spiegel, executive director of ROA, understood immediately the significance of the case and realized the importance of having ROA's voice heard by the court. To do this, he enlisted the assistance of LTC Paul Conrad, USAR, JAGC, who is the Army's foremost expert on the SSCRA and an ROA life member and former chapter president. During a past assignment, Colonel Conrad taught the SSCRA at the Army's JAG School and authored two updates to JA-260, the Army's authoritative SSCRA manual. He provided invaluable advice and counsel to another ROA member, COL W. James Hill III, USAR, an attorney in Shreveport, La., who filed ROA's amicus brief, which was favorably mentioned by the court in its ruling.

Colonel Conrad also advised LTC Jill M. Grant, USA JAGC, and MAJ James R. Agar II, USA JAGC, who were the principal authors of the Statement of Interest brief filed on behalf of the Department of the Army by the Department of Justice. In my opinion, these briefs were extremely helpful in obtaining a favorable ruling for Colonel Cathey. Largely as a result of those two briefs from outside parties, the court realized the significance of the issues involved in the case.

On 13 August 2001, Judge Robert G. James of the U.S. District Court for the Western District of Louisiana entered summary judgment in favor of Colonel Cathey against BancorpSouth Bank.² Judge James ruled that the bank had violated Cathey's rights under the SSCRA by refusing to lower the interest rates on the loans and that Cathey had a private right of action for damages for the violation of his rights. In his ruling, Judge James adopted a Report and Recommendation previously entered by U.S. Magistrate Judge James Kirk, which acknowledged the help provided to the court by the Department of Justice and ROA briefs. Clearly, ROA's intervention on behalf of Cathey was an important factor in his significant victory providing Reservists the authority to sue creditors who refuse to abide by the 6 percent interest cap provision of the SSCRA.

A jury will resolve the issue of damages in a trial tentatively set to begin 6 May 2002, unless the bank settles with Colonel Cathey. The bank officer who refused to lower the interest rates or to refund the money is no longer employed by the bank. The bank president who refused to overrule the officer is no longer the bank president. These personnel changes occurred about

²*Cathey v. First Republic Bank*, No. 00-2001-M, 2001 WL 1471747 (WD. La. Aug. 14, 2001).

the time the summary judgment was granted in favor of Colonel Cathey. Coincidence? I think not.

Does David ever beat Goliath outside the Bible stories we read as children? I believe that one ROA member is well on his way to proving that if you fight long enough and hard enough, your rights will ultimately be enforced. Although the final outcome is not yet known, the summary judgment means that the only remaining issue is damages.

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This article is one of 2000-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month. ROA is almost a century old— it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs. Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448. If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Officers
Association 1
Constitution Ave. NE
Washington, DC 20002

