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Beef Up Enforcement of the SCRA

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4.9—SCRA Enforcement

On July 12, 2011, I testified at a forum conducted by the Senate Commerce Committee, concerning the Servicemembers Civil Relief Act (SCRA). During the forum, Representative Robert E. Andrews of New Jersey asked for a summary of the SCRA's enforcement mechanism, and I volunteered to take the question for the record and respond in writing. Here are excerpts from my response, which I submitted to the Committee shortly after the forum.

Public Law 111-275, effective October 13, 2010, beefed up the SCRA's enforcement mechanism by adding three new sections, as follows:

Section 801

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 [the SCRA]; 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 an action, and may obtain such appropriate relief as the person could obtain in a civil action under section 802 [50 U.S.C. App. 597a] with respect to that violation, along with costs and a reasonable attorney fee.

Title 50 Appendix, United States Code, section 597 [50 U.S.C. App. 597].

Section 802

Private Right of Action

(a) In general. Any person aggrieved by a violation of this Act may in a civil action—

(1) obtain any appropriate equitable or declaratory relief with respect to the violation; and

(2) recover all other appropriate relief, including money damages.

(b) Costs and attorneys fees. The court may award to a person aggrieved by a violation of this Act who prevails in an action brought under subsection (a) the costs of the action, including a reasonable attorney fee.

50 U.S.C. App. 597a.

Section 803

Preservation of remedies

Nothing in Section 801 or 802 shall be construed to preclude or limit any remedy otherwise available under any other law, including consequential and punitive damages.

50 U.S.C. 597b.

These new provisions, enacted just last year, are most welcome. Prior to the 2010 amendments, there were some SCRA actions initiated by the Attorney General, but there was no clear statutory authorization for such actions. Section 801 is a very clear statutory authorization—I do not know how Congress could have written this provision any more clearly.

Prior to the 2010 amendments, the SCRA (and previously the Soldiers' and Sailors' Civil Relief Act) never expressly addressed the question of whether there was a private right of action under this law. The majority rule in the courts was that there was an implied private right of action, but there were some court cases suggesting that there was no private right of action. After the 2010 amendment, there is now an explicit private right of action, and that is most welcome.

Section 802(b) now provides for the court to order the losing defendant to pay the attorney fees for the prevailing SCRA plaintiff. This new provision is most welcome, because it will enable the victims of SCRA violations to obtain competent counsel to enforce their rights.

With regard to SCRA enforcement, it should also be noted that the SCRA contains several *criminal* provisions, making willful SCRA violations a misdemeanor, punishable by up to one year in jail and a substantial fine. For example, Section 207(e) [50 U.S.C. App. 527(e)] imposes that penalty on a creditor who knowingly violates the requirement to reduce the interest rate to 6%, for pre-service debts that carry a higher interest rate, if the debtor's entry on active duty has materially affected the debtor's ability to pay interest at a higher rate.

Section 302 of the SCRA [50 U.S.C. App. 532] provides protection to the person entering active duty under installment contracts for purchase or lease of real or personal property, and section 302(b) [50 U.S.C. App. 532(b)] provides for a substantial fine and imprisonment for up to one year for a person who knowingly resumes possession of real or personal property in violation of this section.

Section 303 [50 U.S.C. 533] makes unlawful the *non-judicial foreclosure* on real or personal property belonging to an active duty service member, and section 303(d) [50 U.S.C. App. 533(d)] provides for up to one year of imprisonment and a substantial fine for the person who knowingly makes or causes to be made an unlawful sale, foreclosure, or seizure, or who knowingly attempts to do so.

Section 305 [50 U.S.C. 535] gives the person entering active duty the right to terminate a lease on premises (apartment, house, office, etc.) or a vehicle lease. Section 305(h) [50 U.S.C. 535(h)] provides for a substantial fine and up to one year of imprisonment for any person who knowingly seizes, holds, or detains personal effects or a security deposit of a service member or service member's dependent for based upon a lease that the service member has lawfully terminated under this section.

Section 306 [50 U.S.C. App. 536] protects the service member with respect to life insurance policies, and section 306(e) [50 U.S.C. App. 536(e)] provides for a substantial fine and imprisonment for up to one year for any person who knowing takes an act contrary to this section, or attempts to do so.

Section 307 [50 U.S.C. 537] protects the service member with respect to the enforcement of storage liens, and section 307(c) [50 U.S.C. 537(c)] provides for a substantial fine and imprisonment for up to one year for any person who takes an act contrary to this section, or attempts to do so.

It would be most helpful in gaining compliance with the SCRA if the Department of Justice were to initiate and pursue criminal prosecutions in a handful of egregious cases.