

Required Refund on Canceled Vehicle Lease

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4.2—SCRA right to terminate lease or contract upon mobilization

4.9—SCRA enforcement

***Venneman v. BMW Financial Services NA, LLC*, 990 F. Supp. 2d 468 (D. N.J. 2013).**

The law

In this very recent and scholarly court decision, Judge Esther Salas of the United States District Court for the District of New Jersey liberally construed the Servicemembers Civil Relief Act (SCRA) in determining the amount that must be refunded to a Reserve Component (RC) member who has been called to the colors and who has lawfully terminated a vehicle lease, because of the call-up.³

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.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

³President Obama appointed Judge Salas and she was confirmed by the Senate in 2011. She has her BA from Rutgers University in 1991 and her JD from Rutgers Law School in 1994.

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.⁴ While in boot camp and then on the front lines in Europe, 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 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 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).

Since 1917, under the SSCRA, federal law has given to the person entering active duty (voluntarily or involuntarily) the right to terminate a lease on premises (apartment, house, office, farm, etc.). In 2003, with the enactment of the SCRA, Congress gave persons entering active duty the additional right to terminate vehicle leases. The pertinent SCRA section is as follows:

§ 535. Termination of residential or motor vehicle leases

⁴Th Coast Guard Reserve, the Air Force Reserve, and the Air National Guard were established later.

(a) Termination by lessee.

(1) In general. The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after--

(A) the lessee's entry into military service; or

(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

(2) Joint leases. A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

(b) Covered leases. This section applies to the following leases:

(1) Leases of premises. A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if--

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a change of permanent station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.

(2) Leases of motor vehicles. A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if--

(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and

who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

(B) the servicemember, while in military service, executes the lease and thereafter receives military orders--

(i) for a change of permanent station--

(I) from a location in the continental United States to a location outside the continental United States; or

(II) from a location in a State outside the continental United States to any location outside that State; or

(ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.

(c) Manner of termination.

(1) In general. Termination of a lease under subsection (a) is made--

(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than

15 days after the date of the delivery of written notice under subparagraph (A).

(2) Delivery of notice. Delivery of notice under paragraph (1)(A) may be accomplished--

(A) by hand delivery;

(B) by private business carrier; or

(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

(d) Effective date of lease termination.

(1) Lease of premises. In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

(2) Lease of motor vehicles. In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

(e) Arrearages and other obligations and liabilities.

(1) Leases of premises. Rent amounts for a lease described in subsection (b)(1) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, that are due and unpaid at the time

of termination of the lease shall be paid by the lessee.

(2) Leases of motor vehicles. Lease amounts for a lease described in subsection (b)(2) that are unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. The lessor may not impose an early termination charge, but any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

(f) Rent paid in advance. Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

(g) Relief to lessor. Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

(h) Misdemeanor. Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or 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.

(i) Definitions.

(1) Military orders. The term "military orders", with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

(2) CONUS. The term "continental United States" means the 48 contiguous States and the District of Columbia.

50 U.S.C. App. 535 (emphasis supplied—subsection f).

The facts

W. Dana Venneman is a Lieutenant Colonel in the Army Reserve Judge Advocate General's Corps. He leased a 2006 BMW 330i from De Simone BMW Limited on October 6, 2005.⁵ The vehicle was valued at \$42,336.⁶ Venneman paid \$6,000 at closing.⁷ Of that payment, \$700 was allocated to closing costs, and the remaining \$5,300 was allocated to Capitalized Cost Reduction (CCR) payments.⁸ The lease called for Venneman to make monthly payments for 36 months, at which time he could purchase the vehicle at an established price or return the vehicle.⁹

On February 27, 2008, Venneman was ordered to active duty, and he elected to terminate the vehicle lease, in accordance with 50 U.S.C. App. 535.¹⁰ He followed the statutory steps for terminating the lease, and he turned in the vehicle on March 5, 2008, before he deployed. BMW recognized that Venneman had properly terminated the lease and did not seek additional lease payments from him, for the seven months remaining on the lease.¹¹

Applying the law to the facts

The issue in this case relates to the treatment of the CCR payment of approximately \$5,300. The plaintiff (Venneman) insists that the CCR payment amounts to a pre-payment of part of the rent

⁵*Venneman v. BMW Fin. Services NA, LLC*, 990 F. Supp. 2d 468, 469 (D. N.J. 2013).

⁶*Id.* at 470.

⁷*Id.*

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

¹¹*Id.*

or lease payments due on the vehicle.¹² At the time of termination, there were seven months remaining on the original lease term.¹³ The \$5,300 CCR payment divided by 36 (the number of months in the lease) leads to a monthly credit of \$147. Multiplying that figure by seven (the number of months remaining) means that Venneman is entitled to a refund of \$1029.

The defendant (BMW) argues that the \$5,300 CCR payment at the inception of the lease should be characterized as a “down payment” rather than as “prepayment of rent” and that, therefore, no refund is due to Venneman.¹⁴

This case is what is known as a “pure question of law” case. There is no real dispute as to the facts. There is no question that Venneman leased the vehicle, that he paid the amounts claimed, that he was called to active duty, and that he performed those steps required to terminate the lease upon his call to the colors.¹⁵ The issue in dispute is whether the \$5,300 CCR payment should be characterized as a down payment or as prepayment of part of the rent payments due. That is a question of law, for the court, rather than a question of fact, for a jury. Accordingly, this case was decided on cross motions for partial summary judgment.

In her opinion, Judge Salas pointed out that the Supreme Court has held that the SSCRA (and presumably the SCRA as well) is to be “read with an eye friendly to those who dropped their affairs to answer their country’s call.”¹⁶ Applying this liberal construction and other rules of statutory interpretation, Judge Salas ruled that BMW was required to make a *pro rata* refund of the CCR payment to Venneman.¹⁷

Where do we go from here?

The defendant (BMW) has appealed to the United States Court of Appeals for the Third Circuit, the federal appellate court that sits in Philadelphia and hears appeals from district courts in Delaware, New Jersey, Pennsylvania, and the United States Virgin Islands. The plaintiff, through his counsel, has asked ROA to file an *amicus curiae* (friend of the court) brief in the Third Circuit, urging that court to affirm Judge Salas’ decision, and we will likely do so.

Class action treatment

Judge Salas approved the plaintiffs’ motion to treat this case as a class action. The two named plaintiffs (Venneman and Collins) represent a class of many individuals—those who leased

¹²*Id.* at 471.

¹³*Id.* at 477.

¹⁴*Id.* at 471.

¹⁵There is a named co-plaintiff (Theodore Collins) who also leased a BMW vehicle and who also was called to active duty and terminated his lease. According to Judge Salas, there is a remaining factual dispute as to whether Collins properly performed the steps necessary to terminate his lease. Therefore, Judge Salas did not grant summary judgment with respect to Collins.

¹⁶*Venneman*, 990 F. Supp. 2d at 474 (quoting *LeMaistre v. Leffers*, 333 U.S. 1, 5-6 (1948); *Boone v. Lightner*, 319 U.S. 561, 575 (1943)).

¹⁷*Id.* at 471.

vehicles from BMW and who (during the terms of their leases) were called to active duty in the armed forces and who terminated their vehicle leases in accordance with the SCRA. If you meet these criteria, you are probably part of the class.

If you believe that you may be a member of this class, and if you have questions about the status of this case, I suggest that you contact attorney Thomas T. Booth, Jr. at 856-354-6060 or by e-mail at BoothLaw@comcast.net. Mr. Booth is also willing to give you a free consultation if you have a similar issue involving the termination of a vehicle lease with another company when you entered active duty.

Update – March 2022¹⁸

SCRA

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.¹⁹ The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant section cited throughout the article can be found as followed:

50 U.S.C. App. § 535 discussing the termination of residential and motor vehicle leases can be found at 50 U.S.C. § 3955.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.²⁰

Class Action

As indicated in the article, a class action was brought against BMW FS. The plaintiffs alleged that California-based BMW FS was not complying with the law that protects service members who lease homes or autos by allowing them to cancel as well as surrender leased vehicles or property without penalty due to deployment.²¹ After six years of litigation, the parties settled.²²

¹⁸Update by Second Lieutenant Lauren Walker, USMC.

¹⁹*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra> (last visited Mar. 10, 2022).

²⁰Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

²¹*Deployed Service Members to Receive \$2.4 Million in Class Action over Canceled Leases*, GILL & CHAMAS INJURY ATTORNEYS (Oct. 9, 2019), <https://www.gillandchamas.com/deployed-service-members-to-receive-2-4-million-in-class-action-over-canceled-leases/>.

²²*Id.*; Settlement Agreement Between the United States of America and BMW Financial Services N.A., L.L.C., *United States v. BMW Fin. Services, N.A., L.L.C.*, Civ. No. 2:18-cv-02495 (D. N.J. 2019).

The settlement was for \$2.4 million, not including the \$675,000 in attorney fees and approximately \$55,000 in litigation costs the plaintiffs were awarded.²³

Please join or support ROA

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

²³²³*Deployed Service Members to Receive \$2.4 Million in Class Action over Canceled Leases*, *supra* note 21.