

## LAW REVIEW<sup>1</sup> 15031

March 2015

### **Santander Consumer USA Required to Pay 9.35M for Illegally Repossessing the Vehicles of Service Members.**

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[About Sam Wright](#)

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*Navy Times* has reported<sup>3</sup> that Santander Consumer USA (one of the nation's largest motor vehicle lenders) will pay at least \$9,350,000 to service members whose vehicles were illegally repossessed by Santander,<sup>4</sup> in violation of the Servicemembers Civil Relief Act (SCRA). These

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<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://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.

<sup>2</sup>BA 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](mailto:SWright@roa.org).

<sup>3</sup>Karen Jowers, *Auto lender to pay \$9M for improper repossessions*, NAVY TIME (Feb. 25, 2015), <https://www.navytimes.com/news/your-military/2015/02/25/auto-lender-to-pay-9m-for-improper-repossessions/>.

<sup>4</sup>*Id.* (according to the *Navy Times* article, Santander is required to pay \$10,000 plus compensation for any lost equity, with interest, to each service member whose vehicles (750 vehicles included) was allegedly repossessed without a court order).

payments are to fulfill Santander's obligations under a settlement Santander reached with the United States Department of Justice (DOJ), which had sued Santander in the United States District Court for the Northern District of Texas (Dallas). The service members affected by this settlement are all over the country, not just in Texas.

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. While in boot camp and then on the front lines in France, 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 Reserve Component (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).

Section 302 of the SCRA provides as follows:

§ 532. Protection under installment contracts for purchase or lease

- (a) Protection upon breach of contract.
  - (1) Protection after entering military service. *After a servicemember enters military*

*service, a contract by the servicemember for--*

- (A) the purchase of real or personal property (including a motor vehicle); or
- (B) the lease or bailment of such property,

*may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.*

(2) Applicability. This section applies only to a contract for which a deposit or installment has been paid by the servicemember *before* the servicemember enters military service.

(b) Misdemeanor. A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act, or who knowingly 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.

(c) Authority of court. In a hearing based on this section, the court--

- (1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;
- (2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or
- (3) may make other disposition as is equitable to preserve the interests of all parties.

50 U.S.C. App. 532 (emphasis supplied).

This section means that it is unlawful for a creditor to repossess property of an active duty service member *without a court order* under a loan agreement that an individual signed *before entering active duty*. This section applies to real property, like a house, but it also applies to personal property, like a vehicle.

For example, this section applies to Mary Jones, who was a petty officer in the Coast Guard Reserve (not on active duty) when she took out a loan to buy a car and *after* taking out the loan entered active duty voluntarily or involuntarily. This section also applies to Joe Smith, who had no military status when he took out the loan to buy a car and who later (before repaying the loan in full) enlisted in the Army and reported to basic training or Officer Candidate School. This section does not apply to Bob Williams, who was already on active duty when he took out a car loan.

Creditors and vehicle repossession companies need to establish procedures to check on the military status of each person whose vehicle is to be repossessed, *before* attempting to

repossess the vehicle. Any person or corporation that repossesses a vehicle unlawfully faces a real prospect of both criminal and civil liability.

The Department of Defense (DoD) has a *free* online service to look up if someone is on active duty for the purposes of SCRA. The website is:

[https://www.dmdc.osd.mil/appj/scra/single\\_record.xhtml](https://www.dmdc.osd.mil/appj/scra/single_record.xhtml). This website allows you to see if a named individual is/was on active duty at a specific date. This is a free service. All that you need is the individual's Social Security number, date of birth, and last name.

The DoD also has a *free* online service for looking up multiple people or multiple dates for one person all at the same time. To use this service you must first create a DoD account (also free). If you plan on using this service several times, it is worthwhile to get an account. The website is: [https://www.dmdc.osd.mil/appj/scra/multiple\\_record.xhtml](https://www.dmdc.osd.mil/appj/scra/multiple_record.xhtml).

This service provides information about the active status of persons in the Coast Guard (in the Department of Homeland Security), the commissioned corps of the Public Health Service (in the Department of Health and Human Services), and the commissioned corps of the National Oceanic and Atmospheric Administration (in the Department of Commerce)<sup>5</sup>, as well as the four DoD services (Army, Navy, Marine Corps, and Air Force).

For example, let us say that Mary Jones was a petty officer in the Coast Guard Reserve, not on active duty, when she took out a loan with Santander (or any other bank, credit union, or loan company) in July 2014. Jones entered active duty (voluntarily or involuntarily) in December 2014. Santander believes that Jones has missed several payments, and the company seeks to repossess the vehicle in March 2015, after Jones has entered active duty. Because Jones is on active duty when the company seeks to repossess the vehicle, although she was not on active duty when she took out the loan, Santander is forbidden to use self-help to repossess the vehicle.

In this situation, if Santander wants to repossess the vehicle it must sue Jones in state court. In such a lawsuit, Jones has important rights under sections 201 and 202 of the SCRA, 50 U.S.C. App. 521 and 522. If Jones is on active duty at a place distant from the location of the lawsuit, and if her commanding officer certifies to the court that her military duties preclude her participation in the court proceeding, Jones is entitled to a continuance of at least 90 days, and additional continuances in the discretion of the court, until her military duties no longer preclude her participation in the proceeding. 50 U.S.C. App. 522(a).<sup>6</sup>

In any civil lawsuit in any court in the United States (federal or state), it is necessary as a condition precedent to obtaining a default judgment that the plaintiff aver to the court, under

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<sup>5</sup> The SCRA explicitly applies to persons in all seven uniformed services, including the commissioned corps of the Public Health Services and the commissioned corps of the National Oceanic and Atmospheric Administration. See U.S.C. App. § 511(2)(B).

<sup>6</sup>The North Carolina Supreme Court recently issued a public reprimand to Judge Brenda G. Branch for flouting these SCRA requirements Please see law Review 15019).

oath, that the defendant is or is not on active duty or in active service in one of the seven uniformed services. 50 U.S.C. 521(b)(1).

For example, let us say that I have sued Melissa Williams in state or federal court—this could be a suit on an asserted debt, or a personal injury case, or a civil case of any kind. Let us say that in the state in question a defendant has 60 days to file an answer to a lawsuit, after having been served with process. The 60 days has passed, and Williams has not filed an answer. If I file an affidavit with the court stating under oath that Williams is not a service member on active duty or in active service,<sup>7</sup> I can then obtain a *default judgment* against Williams. I sued her, and she failed to respond within the time permitted by law, so I win.

If I file an affidavit to the effect that Williams is not on active duty, without having made a reasonable effort to ascertain her military status (if any), I am guilty of a federal misdemeanor, punishable by fine and imprisonment for up to one year. 50 U.S.C. 521(c). At a minimum, I must utilize the free DoD service described above, to determine if Williams is on active duty. All too often, attorneys file affidavits stating that the defendant (against whom a default judgment is to be awarded) is not on active duty, even when the defendant is on active duty.<sup>8</sup>

### **How the SCRA is enforced**

Section 801 of the SCRA gives the United States Attorney General (DOJ) the authority to sue any person or corporation that violates the SCRA in a systematic way. Here is the text of that section:

#### **§ 597. 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; 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

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<sup>7</sup>The term “active service” applies to members of the Public Service Commissioned corps and the National Oceanic and Atmospheric Administration Commissioned corps. See 50 U.S.C. App. § 511(2)(B).

<sup>8</sup>Please see Law Review 1048, concerning the James Hurley case. The “foreclosure mil” law firm repeatedly filed affidavits stating that Hurley was not on active duty when in fact he was on active duty in Iraq. The paralegal who prepared and signed these affidavits, as directed by the attorney, testified that he prepared and signed the affidavits exactly as directed by the attorney, without making any effort to ascertain Hurley’s military status and that he (the paralegal) did not know what “active duty” meant.

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 action, and may obtain such appropriate relief as the person could obtain in a civil action under section 802 with respect to that violation, along with costs and a reasonable attorney fee.

The *Navy Times* article explains how DOJ became aware of Santander's unlawful practices: "Justice officials said they first learned of Santander's practices through a referral from the Army's legal assistance program. That referral involved a claim that Santander illegally repossessed the car of 19-year-old Specialist Joshua Davis, of Casselberry, Florida, in the middle of the night, after being told he was at basic training."<sup>9</sup>

I congratulate DOJ for having brought this lawsuit and for having obtained excellent relief for Specialist Davis and hundreds of other affected service members.<sup>10</sup>

#### **Update – March 2022<sup>11</sup>**

#### **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.<sup>12</sup> 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 sections cited throughout the article can be found as followed:

50 U.S.C. App. § 511 discussing definitions can be found at 50 U.S.C. § 3911.

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<sup>9</sup>Karen Jowers, *supra* note 3.

<sup>10</sup>Section 802 of the SCRA, 50 U.S.C. App. § 597a, creates an explicit private right of action for the recovery of court costs and attorney fees for a plaintiff who retains counsel and sues to enforce the SCRA rights. That is another way to obtain relief under this law.

<sup>11</sup>Update by Second Lieutenant Lauren Walker, USMC.

<sup>12</sup>*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra> (last visited Mar. 10, 2022).

50 U.S.C. App. § 521 discussing protection of servicemembers against default judgments can be found at 50 U.S.C. § 3931.

50 U.S.C. App. § 522 discussing stay of proceedings when servicemember has notice can be found at 50 U.S.C. § 3932.

50 U.S.C. App. § 532 discussing protection under installment contract for purchase or lease can be found at 50 U.S.C. § 3952.

50 U.S.C. App. § 597 discussing enforcement by the Attorney General can be found at 50 U.S.C. § 4041.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved.*<sup>13</sup>

### **SCRA Website**

The Servicemembers Civil Relief Act (SCRA) Website now offers the free online service to look up if someone is on active duty for the purposes of SCRA.<sup>14</sup> The website is: <https://scra-w.dmdc.osd.mil/scra/#/home>. This website allows you to see if a named individual is or was on active duty on a specific date. This is a free service. All that you need is the individual's social security number, date of birth, and last name. On the website you can look up multiple people or multiple dates for one person. To use this service, you must first create an account.

### **Please join or support ROA**

This article is one of 2,300-plus “Law Review” articles available at [www.roa.org/lawcenter](http://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 on 10/1/1922 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 almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to

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<sup>13</sup>Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

<sup>14</sup>Welcome to SCRA, SERVICEMEMBERS CIVIL RELIEF ACT (SCRA) WEBSITE, <https://scra-w.dmdc.osd.mil/scra/#/home> (last visited Mar. 16, 2022).

exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, 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 eight<sup>15</sup> uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. 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](http://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 Organization of America  
1 Constitution Ave. NE

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<sup>15</sup>Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.