

## **A Dallas Towing Company Has Settled with the Justice Department after Wrongfully Selling SCRA-protected Service Member Vehicles.**

By Second Lieutenant Lauren Walker<sup>1</sup>

4.6—SCRA eviction and foreclosure protection

4.9—SCRA enforcement

### **I. INTRODUCTION**

The United States wants to ensure that its service members are solely focused on protecting the nation while on active duty.<sup>2</sup> Problems and inconveniences at home should not be allowed to distract the service member from his or her duties to the nation. Congress recognized this important point early on and enacted the Soldiers' and Sailors' Civil Relief Act of 1917 ("SSCRA") shortly after our country entered World War I. This Act gave the person entering active duty voluntarily or involuntarily the right to terminate a lease, and it protected the service member's legal and financial interests while he or she was away from home and fully engaged in the defense of the nation. Early in this century, Congress comprehensively updated and improved the SSCRA. In 2003, President George W. Bush signed the Servicemembers Civil Relief Act ("SCRA").<sup>3</sup>

Like the SSCRA, the SCRA ensures that service members can stay focused on the protection of the Nation. While the service member is away serving the Nation, it is only fair that the Nation protects the service member at home. A significant protection afforded to service members under the SCRA is against foreclosure of his or her personal property and effects while on military service.<sup>4</sup> A person must jump through the appropriate hoops before foreclosing on a service member's property or effects.<sup>5</sup> Failure to abide by the SCRA should and does lead to severe consequences.

### **II. BACKGROUND**

Airman First Class Fassil Mekete has been an active-duty member of the United States Air Force since August 29, 2017.<sup>6</sup> Around that date, he was ordered to report at Joint Base San Antonio-

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\*Military title used for identification only. The views expressed in this article are the views of the author, and not necessarily the views of the Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. Government.

<sup>2</sup>50 U.S.C. § 3902.

<sup>3</sup>Pub. L. 108-189, 117 Stat. 2835 (Dec. 19, 2003).

<sup>4</sup>50 U.S.C. § 3958.

<sup>5</sup>*Id.*

<sup>6</sup>Complaint at 3, *United States v. United Tows, LLC* (N.D. Tex. 2020) (No. 3:30-cv-02992-L).

Lackland in San Antonio, Texas for an eight-week basic military training.<sup>7</sup> With permission, he left his 1998 Toyota Corolla parked at Chang Lee Tae Kwon Do (a local business in the Dallas area) while he was away for basic training.<sup>8</sup> While at training, Mekete's vehicle was towed by United Tows, LLC on September 28, 2017.<sup>9</sup> A friend of Mekete noticed the vehicle was missing from the parking lot, and, after some difficulty, informed Mekete that his vehicle had been towed.<sup>10</sup> Mekete called United Tows and explained to the company's owner that he was an active-duty service member and would not be able to claim his vehicle at that time and did not know when he could.<sup>11</sup> The owner did not believe Mekete regarding his active duty service.<sup>12</sup>

Upon finishing his basic training, Mekete could not return to Dallas to retrieve his vehicle because the Air Force had ordered him to report immediately to technical training at Sheppard Air Force Base near Wichita Falls, Texas.<sup>13</sup> Since Mekete could not return to Dallas and the owner of United Tows did not believe that Mekete was an active-duty service member, the vehicle was auctioned on November 17, 2017.<sup>14</sup> Due to the actions taken by the United Tows, Mekete was left without reliable transportation at his base, being left to walk, pay for transportation, or rely on friends.<sup>15</sup> It was not until April 26, 2018, that Mekete was able to get a used car at the cost of \$13,132, this does not include the additional fees and costs related to the purchase of the vehicle.<sup>16</sup>

Mekete is not the only service member harmed by United Tows. Between October 17, 2014, and April 26, 2019, at least four other SCRA-protected service members had their vehicles towed and auctioned by United Tows.<sup>17</sup> In each instance, United Tows violated the SCRA.

The plaintiff, the United States of America, filed the complaint on September 28, 2020.<sup>18</sup> The complaint alleged that United Tows violated SCRA by illegally enforcing liens on the property and effects of SCRA-protected servicemembers without authorizing court orders.<sup>19</sup> Specifically, United Tows auctioned off the vehicles of at least five service members.<sup>20</sup> This led to both financial loss and extreme stress for these service members.<sup>21</sup>

Before the lawsuit could reach trial, a settlement was reached.<sup>22</sup> United Tows agreed to pay a total of \$50,000, with \$20,000 going to Mekete, \$20,000 being shared among the other four service

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<sup>7</sup>*Id.* at 4.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.* at 4-5.

<sup>11</sup>*Id.* at 5.

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

<sup>15</sup>*Id.* at 6.

<sup>16</sup>*Id.*

<sup>17</sup>*Id.* 6-7.

<sup>18</sup>*Id.* at 9.

<sup>19</sup>*Id.* at 7.

<sup>20</sup>*Id.* at 6-7.

<sup>21</sup>*Id.* at 6.

<sup>22</sup>Karen Jowers, *DOJ: Towing company agrees to pay troops for illegally selling their vehicles*, MILITARYTIMES: MIL MONEY (July 24, 2021), <https://www.militarytimes.com/pay-benefits/mil-money/2021/07/23/doj-towing-company-agrees-to-pay-troops-for-illegally-selling-their-vehicles/>.

members, and \$10,000 paid to the U.S. Treasury as a civil penalty.<sup>23</sup> United Tows must also implement several policies and procedures to ensure it does not violate the SCRA in the future.<sup>24</sup>

### III. SCRA

The purpose of the SCRA is to provide service members with protection from certain legal actions so that the service member can focus his or her energy on the defense needs of the nation.<sup>25</sup> One of those protections afforded by the SCRA is protection against foreclosure. Before a person forecloses or enforces any lien on the property or effects of a service member during any period of military service and for 90 days thereafter, the individual must obtain a court order.<sup>26</sup> In the proceeding for a court order to foreclose or enforce a lien on a service member's property, the court may stay the proceedings for a period of time as justice and equity require or adjust the obligation to preserve the interest of all parties.<sup>27</sup> The court may also issue any order it deems necessary to preserve the interests of all the parties, including appointing an attorney to represent the service member and requiring the lienholder to post a bond with the court.<sup>28</sup>

If a person violates the provisions in the SCRA, he or she may be subject to severe penalties. The person in violation of the order can be subject to up to one year in prison, equitable or declaratory relief, monetary damages, and civil penalties.<sup>29</sup>

### IV. THE PROPOSED SETTLEMENT AGREEMENT

Due to the violations, the Attorney General requested three types of relief: equitable relief, civil penalty, and monetary damages.<sup>30</sup> The equitable relief requested came in the form of enjoining United Tows from enforcing liens on vehicles without first obtaining court orders, putting all identifiable victims in the position they would have been in but for the illegal conduct, and preventing the recurrence of any illegal conduct in the future.<sup>31</sup> The monetary damages requested would be to the identifiable victims of United Tows violations of the SCRA and the U.S. Treasury.<sup>32</sup>

In the proposed settlement agreement, the Attorney General obtained both equitable relief and monetary damages. Regarding equitable relief, United Tows is to develop SCRA policies and procedures of vehicle sales and disposals to comply with the SCRA.<sup>33</sup> This includes United Tows reviewing information received from the owners of the vehicles and others for evidence of military service, examining the vehicles and their contents for evidence of military service, and searching

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<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

<sup>25</sup>50 U.S.C. § 3902.

<sup>26</sup>50 U.S.C. § 3958.

<sup>27</sup>*Id.*

<sup>28</sup>50 U.S.C. § 3931.

<sup>29</sup>50 U.S.C. §§ 3958, 404.

<sup>30</sup>Complaint at 8, *United States v. United Tows, LLC*, (N.D. Tex. 2020) (No. 3:30-cv-02992-L).

<sup>31</sup>*Id.*

<sup>32</sup>*Id.*

<sup>33</sup>Jowers, *supra* note 17.

the database of the Defense Manpower Data Center.<sup>34</sup> The company must also develop SCRA training materials for its employees.<sup>35</sup>

Regarding monetary damages, the Attorney General was able to secure \$50,000. Of the sum, \$20,000 will be paid to Mekete, \$20,000 will be shared between the other four servicemembers, and \$10,000 will be paid to the U.S. Treasury as a civil penalty.

## **V. ANALYSIS OF THE PROPOSED SETTLEMENT AGREEMENT**

### **a. Attorney General Filing Suit**

The Attorney General made a clear showing that he was authorized to bring the suit against United Tows. There are two instances in which the Attorney General can bring suit. The first is when a person or entity engages in a pattern or practice of violating the SCRA and the second is when the facts raise an “issue of significant public importance.”<sup>36</sup> The Attorney General can demonstrate both in this case. Regarding the first basis, United Tows has demonstrated a repeated pattern of disregarding the SCRA. In five years, United Tows auctioned off at least five vehicles owned by SCRA-protected servicemembers.<sup>37</sup> The Attorney General can make a showing of the second basis as well because this issue is significant to the public. The purpose of the SCRA is to protect service members so that they can stay focused on protecting the nation.<sup>38</sup> However, if a service member’s property and effects are being foreclosed and sold, then the service members are distracted, which can lead to deadly results.

### **b. The Relief Requested**

The Attorney General requested, and obtained, three types of relief. Not only did the settlement agreement include equitable relief, but also monetary damages in the form of compensatory damages for the affected service members and a civil penalty paid to the U.S. Treasury. The reason why both are necessary is that the Attorney General needs to ensure that United Tows and others do not violate the SCRA in the future and because the service members need to be compensated for their injuries.

#### **i. Equitable Relief**

Equitable relief is considered an extraordinary remedy. It is awarded when monetary damages alone will not restore the wronged party to the rightful position. Equitable relief comes in many different forms, but here the Attorney General makes use of the prophylactic injunction. This is used when changes need to be made going forward. This remedy is not used often but is appropriate to deter a serial wrongdoer from continuing violations.

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<sup>34</sup>*Id.*

<sup>35</sup>*Id.*

<sup>36</sup>50 U.S.C. § 4041(a).

<sup>37</sup>Complaint at 6-7, *United States v. United Tows, LLC* (N.D. Tex. 2020) (No. 3:30-cv-02992-L).

<sup>38</sup>50 U.S.C § 3902.

United Tows clearly needs such a lesson. It repeatedly violated the rights afforded to service members under the SCRA.<sup>39</sup> United Tows foreclosed and disposed of vehicles belonging to at least five SCRA-protected service members.<sup>40</sup> Unless procedures are put into place, United Tows will continue to violate the rights of service members.

I believe the policies and procedures that United Tows must adopt will prevent a recurrence of the violations that harmed Mekrete and at least four other service members. United Tows had nothing in place to protect service members. Under the proposed settlement, United Tows must review information from the owners of the vehicles and others, inspect the vehicles and contents, search the Defense Manpower Data Center database, and train its employees.<sup>41</sup> This will significantly decrease, if not eliminate, SCRA violations in the future.

## **ii. Civil Penalty**

A civil penalty is paid by a defendant found liable for damages to the government. The amount paid by the defendant goes to the U.S. Department of the Treasury, which is negatively affected by the wrongdoing of the party found liable.<sup>42</sup> A civil penalty is meant to be punitive, thus aimed to punish the defendant for wrongful conduct and to deter the defendant and others from future violations of that nature.<sup>43</sup> The amount is in the discretion of the court, with some limits.<sup>44</sup>

Here, the settlement agreement recites a number, \$10,000, which appears to be within the statutory limits. Further, the actions taken by United Tows were egregious. The award is a significant deterrence for United Tows, and others in a similar position, to avoid violations of the SCRA in the future.

## **iii. Compensatory Damages**

Compensatory damages are money damages awarded to a party who has been harmed. The goal is to restore the injured party, as nearly as possible, to the position he or she would have been in had it not been for the wrong of the other party. To do this, the injuries caused by the defendant must be counted, and a dollar value must be put on each injury.

Here, the service members were harmed by the wrongful actions committed by United Tows. Due to the violations, the service members lost their vehicles and the contents in the vehicles.<sup>45</sup> The service members were left without reliable transportation, leaving them to pay for rides or rely on friends to get to work and the store.<sup>46</sup> This continued until the service member could come up

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<sup>39</sup>Complaint at 6-7, *United Tows, LLC*.

<sup>40</sup>*Id.*

<sup>41</sup>Jowers, *supra* note 17.

<sup>42</sup>*See* U.S. SECURITIES AND EXCHANGE COMMISSION, REPORT PURSUANT TO SECTION 308(C) OF THE SARBANES OXLEY ACT OF 2002 4-5, <https://www.sec.gov/news/studies/sox308creport.pdf> (last visited Aug. 28, 2021).

<sup>43</sup>*Id.*

<sup>44</sup>*Id.*

<sup>45</sup>Complaint, 5-7, *United Tows, LLC*.

<sup>46</sup>*Id.* at 6.

with the finances to purchase another vehicle.<sup>47</sup> The whole situation is stressful, inconvenient, and costly. The injuries caused by United Tows should be justly compensated.

While I do believe that Mekete was justly compensated, I do not believe the other four servicemembers were justly compensated. When considering all the injuries, the cost is likely to be around \$20,000, the amount Mekete was awarded. However, four service members had to share \$20,000, leaving each with an award of \$5,000.<sup>48</sup> I do not see how \$5,000 can cover the loss of a vehicle and the contents of the vehicle, the cost of transportation until a replacement vehicle is purchased, and the price and financing of a replacement vehicle, not to mention the stress caused by the lack of reliable transportation. Under the proposed settlement, the four service members were not restored to the position they would have been in had United Tows not violated their rights under the SCRA.

This is not the first time the Department of Justice has agreed to a low settlement for service members.<sup>49</sup> In 2011, the Department of Justice reached two separate settlements with Bank of America and Saxon Mortgage.<sup>50</sup> Both banks illegally foreclosed upon the homes of active duty service members without first obtaining court orders, a violation of the SCRA.<sup>51</sup> Under the first settlement, Bank of America paid \$20 million to 160 servicemembers it wrongfully foreclosed upon between January 2006 and May 2009.<sup>52</sup> This comes to roughly \$125,000 per service member. Under the second settlement, Saxon Mortgage paid \$2.35 million to 17 servicemembers it wrongfully foreclosed upon between January 2006 and June 2009.<sup>53</sup> This comes out to roughly \$138,000 per service member.

While the amounts may seem like a lot at first glance, I do not believe that they justly compensate the wronged service members. The service members and their families lost their homes. They then had to find other living arrangements by purchasing and financing new homes or renting. This is a very costly and stressful endeavor. The compensation paid to the service members does not put them in the position they would have been in but for the SCRA violations committed by the banks. I believe that the Justice Department could have pushed for a higher settlement or gone to trial and received a higher award.

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<sup>47</sup>*Id.*

<sup>48</sup>*Jowers, supra* note 17.

<sup>49</sup>*See* Karen Jowers, *Company agrees to pay \$750k to settle allegations of illegal foreclosures on servicemembers*, MILITARYTIMES: PAY & BENEFITS (Sept. 27, 2018), <https://www.militarytimes.com/pay-benefits/2018/09/27/company-agrees-to-pay-750k-to-settle-allegations-of-illegal-foreclosures-on-service-members/>; *Servicemembers to Receive Over \$123 Million for unlawful Foreclosures Under the Servicemembers Civil Relief Act*, THE UNITED STATES DEPARTMENT OF JUSTICE: OFFICE OF PUBLIC AFFAIRS (Monday, Feb. 9, 2015), <https://www.justice.gov/opa/pr/service-members-receive-over-123-million-unlawful-foreclosures-under-servicemembers-civil>; *Justice Department Settles with Bank of America and Saxon Mortgage for Illegally Foreclosing on Servicemembers*, THE UNITED STATES DEPARTMENT OF JUSTICE: OFFICE OF PUBLIC AFFAIRS (Thursday, May 26, 2011), <https://www.justice.gov/opa/pr/justice-department-settles-bank-america-and-saxon-mortgage-illegally-foreclosing>.

<sup>50</sup>*Justice Department Settles with Bank of America and Saxon Mortgage for Illegally Foreclosing on Servicemembers, supra* note 47.

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

<sup>53</sup>*Id.*

This is not to say that settling is negative. There are lots of benefits for both sides; the parties control the outcome, the resolution is faster, and it is cheaper than litigation. However, a defendant settling with the Department of Justice seems to benefit more than he should. The cost and time a defendant will spend on a suit against the Department of Justice would be immense. That being said, the defendant wants to settle quickly when being sued by the Department of Justice. With this in mind, one would believe that the Department of Justice has the upper hand. Yet, victims of SCRA violations are not being compensated fully.

While the damages received by victims may be too low, the Department of Justice is working hard to hold “institutions and businesses accountable who are required to comply with the Servicemembers Civil Relief Act.”<sup>54</sup> Since 2011, the Justice Department has obtained over \$474 million in monetary relief for over 120,000 service members through the enforcement of SCRA. But I believe the monetary damages awarded to servicemembers can be substantially higher if the Department of Justice would push for it.

## VI. CONCLUSION

The Attorney General appropriately took action in this case. Not only did the Attorney General have the power to bring this case, but also had an obligation. The service members who risk their lives for the Nation need to be protected at home. The Attorney General needed to ensure that United Tows and other businesses like it do not continue to commit SCRA violations and that these service members were justly compensated for their injuries. While I believe that injunctive relief and civil penalties are appropriate steps in ensuring that violations to the SCRA don't continue to occur, I do not believe that the victims are being justly compensated. I believe that the Department of Justice could obtain larger awards for the victims, however, they seem to be holding back to obtain a speedy settlement.

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<sup>54</sup>*Justice Department Files Suit Against Dallas, Texas, Towing Company for Unlawfully Selling Servicemember-Owned Vehicles*, THE UNITED STATES DEPARTMENT OF JUSTICE: OFFICE OF PUBLIC AFFAIRS, <https://www.justice.gov/opa/pr/justice-department-files-suit-against-dallas-texas-towing-company-unlawfully-selling> (Monday, Sept. 28, 2020) (quoting Assistant Attorney General Eric Dreiband of the Justice Department's Civil Rights Division).

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[https://www.military.com/daily-news/2021/09/16/storage-company-must-pay-airman-60000-after-selling-his-property-while-he-was-deployed.html?ESRC=navy-a\\_210922.nl](https://www.military.com/daily-news/2021/09/16/storage-company-must-pay-airman-60000-after-selling-his-property-while-he-was-deployed.html?ESRC=navy-a_210922.nl)