

Repossessions and the Servicemembers Civil Relief Act: You, me and Uncle Hulka

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One of my all-time favorite movies when I was younger was the movie Stripes. Remember Sgt. Hulk, the tenacious drill instructor of our "hero" Bill Murray? He had some of the best lines - "Men, welcome to the United States Army. I'm Sergeant Hulka. I'm your drill sergeant. Before we proceed any further, we gotta get something straight. Your mamas are not here to take care of you now. It's just you, me, and Uncle Sam. And before I leave you, you're gonna find out that me and Uncle Sam are one in the same" - to which the smart-aleck Bill Murray character would then say "Uncle Hulka"? From what I've been reading lately, some finance companies forgot about 'ol Uncle Hulka when they repossessed vehicles from covered servicemembers without getting the necessary court orders.

The U.S. Department of Justice (DOJ) recently reached a settlement with HSBC Finance Corp., as successor to HSBC Auto Finance, a finance company, which repossessed vehicles in violation of the Servicemembers Civil Relief Act (SCRA). DOJ officials announced that HSBC has agreed to pay \$434,500 to resolve allegations that it violated the SCRA by repossessing 75 vehicles owned by protected servicemembers without obtaining the necessary court orders. The DOJ explained that the settlement covers repossessions that occurred between 2008 and 2010. The settlement is still subject to approval however by the U.S. District Court of the Northern District of Illinois.

The DOJ claimed it uncovered these repossessions during an investigation of Santander Consumer USA for similar violations. You may remember that in February 2015, the DOJ entered a settlement with Santander that provided servicemembers with more than \$10.5 million in compensation for repossessions that violated the SCRA. As part of the investigation of Santander's repossession practices, the DOJ learned that HSBC sold to Santander the right to collect debts owed by servicemembers after their cars had been repossessed by HSBC without court orders.

During the recent investigation, the DOJ learned that HSBC allegedly conducted repossessions without court orders even in those cases when it had evidence in its records that suggested a consumer could be a protected servicemember. The DOJ stated that in one case in Indiana, HSBC continued with a repossession after learning that an initial attempt was unsuccessful because guards would not allow the "repo truck" to enter a "secured military post," where the vehicle was located.

Most of the servicemembers compensated through this settlement received partial compensation through the settlement with Santander, and the recent Consent Order requires HSBC to pay \$5,500 to each of these servicemembers. HSBC must pay \$11,000 to affected servicemembers who did not receive payments from the Santander settlement. Further, HSBC also must repair the credit of all affected servicemembers.

It's probably a good time for a refresher on when repossession is not permitted during military service. "Military Service" is a defined term and means the following: (a) a member of the Army, Navy, Air Force, Marine Corps or Coast Guard is in "military service" if the member is on "active duty" (i.e., "full-time duty in the active military service of the United States"). A member of a service branch's reserve component is entitled to the SCRA's protections beginning on the date the servicemember receives the order to report for military service; (b) a member of the National Guard is in "military service" when the member is on "full-time" active military service and if the member has been called to active service by the President of the United States or the Secretary of Defense: (i) for period of more than 30 consecutive days; (ii) to respond to a national emergency; and, (iii) is paid by federal funds; (c) a commissioned officer in the Public Health Service or the National Oceanic and Atmospheric Administration is in "military service" for purposes of the SCRA.

A creditor or lessor must obtain a court order to repossess personal property, such as a vehicle, if the following 2 conditions are met: (i) the servicemember paid a deposit or installment before entering military service; and (ii) the servicemember breached the contract or lease before or during the military service.

When the court grants a stay of proceedings that were brought to repossess personal property, the court may appoint 3 disinterested parties to appraise the property. Based on the appraisal, and if the court finds that undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity (based on the appraisal) be paid by the creditor to the servicemember, or the servicemember's dependents, as a condition of repossessing the property.

The servicemember may waive the rights and protections provided by the SCRA. However, for the waiver to be effective, it must be: (i) in writing; (ii) executed as an instrument that is separate from the obligation or liability to which it applies; and, (iii) specify the legal instrument to which the waiver applies. For waivers that permit the modification, termination or cancellation of a contract, or the repossession, retention, or sale of the property securing the obligation, the waiver is effective only if signed during or after the servicemember's period of military service. Waivers signed before the period of military service are ineffective.

And, don't forget about state laws. Many states have their own laws that are intended to provide protection to servicemembers. For example, some states specifically extended the protections of the SCRA to members of the National Guard in the state when those members are ordered to state active duty.

Don't make Uncle Hulka angry - know what is required under the SCRA before you think about repossessing a car from a servicemember!

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