

LAW REVIEW¹ 26003

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The Servicemembers Civil Relief Act Caps Interest Rates at 6% for Pre-Service Financial Obligations. Does the Cap Apply to Obligations of a Limited Liability Corporation Owned and Operated by a Service Member Entering Active Duty? By Captain Samuel F. Wright, JAGC, USN (Ret.)²

5.0—Servicemembers Civil Relief Act (SCRA) generally.

5.1—SCRA right to interest rate reduction upon entering active duty.

Q: I am a Lieutenant Colonel in the Army Reserve and a life member of the Reserve Organization of America (ROA), and I am expecting to

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,300 "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 Spouses' Protection Act (USFSPA), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), 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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

² 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 45 years, I have collaborated 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 (VRRRA—the 1940 version of the Federal reemployment statute) for 38 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 drafted the proposed VRRRA 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 VRRRA 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 <mailto:swright@roa.org>

be recalled to active duty soon.³ I own and operate a small business. I am the only stockholder in a limited liability corporation (LLC). Let us call it “Candles R Us” or CRU.

When I established this small business two years ago, I took out a business loan from my local bank, and that loan was guaranteed by the United States Small Business Administration (SBA), a federal agency. The loan was made to CRU, but I personally signed as a guarantor, and I pledged valuable property, including my family home, as a security interest on the loan. The interest rate on the loan is substantially more than 6%.

I have read with great interest many of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Soldiers’ and Sailors’ Civil Relief Act (SSCRA),⁴ and other laws that are especially pertinent to those who serve our country in uniform. It appears that USERRA does not apply to me because I am self-employed, but the SSCRA (now SCRA) is very pertinent to my situation, and that is especially true of the provision mandating the reduction of interest rates to 6% on pre-service debts.

By using the “Subject Index” in your Law Review Library, I found eight articles about this provision. Those articles are Law Review (LR) 1,⁵ LR 112, LR 06038, LR 13168, LR 14025, LR 21010, LR 23001, and LR 23016.⁶ I have also read a monograph about the SCRA provision on

³ This article is based on a real inquiry that we have received. We have changed several of the facts to protect the privacy of the individual who contacted us.

⁴ On 12/19/2003, President George W. Bush signed into law the Servicemembers Civil Relief Act (SCRA) as a long-overdue update and rewrite of the SSCRA, which was originally enacted in 1917, shortly after our country entered World War I. See *generally* Law Review 116 (March 2004). That article is by Colonel Mark E. Sullivan, USAR (now retired).

⁵ LR 1 was authored by Colonel John S. Odom, Jr., USAFR (new retired). Colonel Odom is the nation’s leading expert on the application of the SCRA and the SSCRA to service members and their families.

⁶ LR 23016 was authored by First Lieutenant (now Captain) Tara Buckles, USMC. The other articles, except for LR 1, were authored by Captain Samuel F. Wright, JAGC, USN (Ret.).

interest rates.⁷ Your “Law Review Library” is a great free resource for service members, whether or not they are members of your organization.

In Law Review 1, Colonel Odom wrote about a case that he brought as the attorney for LTC Stewart A. Cathey, USAR. Cathey borrowed \$850,000 from a major bank to build two gas stations/convenience stores. Shortly after the second store was completed and opened, Colonel Cathey was called to active duty for nine months in Bosnia (Operation Joint Endeavor). Cathey formally requested the bank to reduce the interest rate on the loan from 11.5% to 6%, as required by the SSCRA. The bank promised to comply with federal law, but it refused to reduce the interest rate as requested.

Before he was deployed to Bosnia, Cathey turned over the operation of the two stores to a retired relative, and the stores went through hard times during Cathey’s deployment. When Cathey returned to Louisiana, he learned that the bank had not reduced the interest rate on the loan, so he demanded that the bank refund the excess interest, which the bank adamantly refused to do. The two stores failed for lack of working capital. If the bank had refunded the excess interest, as required by federal law, it is likely that the stores could have been saved.

In Cathey’s case, the loan was made to the Subchapter S corporation that Cathey had established, but both Cathey and his wife were required to sign the loan contract and to give the bank a security interest in their home. Cathey, represented by Odom, sued the bank in federal court, claiming that the bank had violated the SSCRA. Cathey won and received a large pay-out from the bank, ordered by

⁷ See <https://www.justice.gov/servicemembers/your-rights-servicemember-6-interest-rate-cap-servicemembers-pre-service-debts>. Unfortunately, the DOJ monograph does not address the application of the 6% interest rate cap to a small business owned and operated by an individual who has entered active duty in the armed forces.

the court. The bank argued that the SSCRA did not apply because the loan had been made to the Subchapter S corporation, not to Cathey himself, but the judge firmly rejected that argument.

It appears that my case is substantially similar to the *Cathey* case and that I should also prevail. Do you agree?

A: Yes. In 2003, Congress enacted the Servicemembers Civil Relief Act (SCRA) as a long-overdue update and rewrite of the Soldiers' and Sailors' Civil Relief Act (SSCRA), which was originally enacted in 1917. The language of the SCRA provision is similar to the SSCRA language. The current section of the SCRA is as follows:

(a)Interest rate limitation

(1)Limitation to 6 percent

An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent—

(A)

during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or

(B)

during the period of military service, in the case of any other obligation or liability.

(2)Forgiveness of interest in excess of 6 percent

Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

(3) Prevention of acceleration of principal

The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

(b) Implementation of limitation

(1) Proof of military service

(A) In general

Not later than 180 days after the date of a servicemember's termination or release from military service, in order for an obligation or liability of the servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of—

(i)

the military orders calling the servicemember to military service and any orders further extending military service; or

(ii)

any other appropriate indicator of military service, including a certified letter from a commanding officer.

(B) Independent verification by creditor

(i) In general

A creditor may use, in lieu of notice and documentation under subparagraph (A), information retrieved from the Defense Manpower Data Center through the creditor's normal business reviews of such Center for purposes of obtaining information indicating that the servicemember is on active duty.

(ii) Safe harbor

A creditor that uses the information retrieved from the Defense Manpower Data Center under clause (i) with respect to a servicemember has not failed to treat the debt of the servicemember in accordance with subsection (a) if—

(I)

such information indicates that, on the date the creditor retrieves such information, the servicemember is not on active duty; and

(II)

the creditor has not, by the end of the 180-day period under subparagraph (A), received the written notice and documentation required under that subparagraph with respect to the servicemember.

(2) Limitation effective as of date of order to active duty

Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

(c) Creditor protection

A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a

rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

(d) Definitions

In this section:

(1) Interest

The term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

(2) Obligation or liability

The term "obligation or liability" includes an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage.

(e) Penalty

Whoever knowingly violates subsection (a) shall be fined as provided in title 18, imprisoned for not more than one year, or both.⁸

I believe that the SCRA language should be construed in a way that is consistent with the interpretation of the SSCRA language in the *Cathey* case. This interpretation is supported by a 2014 decision of the United States Supreme Court. In a case involving the Patient Protection and Affordable Care Act (Obamacare) and its mandate that employers provide health insurance coverage for employees, including coverage for contraceptive services, the owners of two closely held family corporations argued that requiring them to provide contraceptive services that arguably amounted to abortion violated their sincerely

⁸ 50 U.S.C. § 3937.

held religious beliefs and that the mandate violated the Religious Freedom Restoration Act.⁹

The Supreme Court agreed with this argument and further held that: “In holding the HHS [Department of Health and Human Services] mandate is unlawful, we reject the argument that the owners of the companies forfeited all RFRA protections when they decided to organize their businesses as corporations rather than sole proprietorships or general partnerships.”¹⁰

The Supreme Court went on to hold:

The purpose of the [corporate personhood] fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve desired ends. ... When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.¹¹

In at least a dozen cases, the Supreme Court has held that statutes enacted for the benefit of service members and veterans should be liberally construed for the benefit of their intended beneficiaries.¹² Interpreting the SCRA liberally for the benefit of service members, as the Supreme Court has commanded, means that the SCRA interest rate reduction provision applies to you, despite the fact that your LLC is the named borrower of the loan. This is especially true because you

⁹ Public Law 103-141, 107 Stat. 1488 (Nov. 16, 1993), codified at 42 U.S.C. § 2000bb-4.

¹⁰ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 688 (2014).

¹¹ *Hobby Lobby Stores, Inc.*, 573 U.S. at 706-07. See also Law Review 14080 (July 2014) for a detailed discussion of the *Hobby Lobby* case.

¹² See *Torres v. Texas Department of Public Safety*, 597 U.S. 580 (2022); *King v. St. Vincent's Hospital*, 502 U.S. 215 (1991); *Regan v. Taxation With Representation*, 461 U.S. 540 (1983); *Alabama Power Co. v. Davis*, 431 U.S. 581 ('977); *Accardi v. Pennsylvania Railroad Co.*, 383 U.S. 225 (1966); *McKinney v. Missouri-Kansas-Texas Railroad*, 357 U.S. 265 (1958); *Dameron v. Broahead*, 345 U.S. 322 (1953); *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946); and *Boone v. Lightner*, 319 U.S. 561 (1943). See also Law Review 24010 (February 2024) for a detailed discussion of the interpretation of laws like the SSCRA, the SCRA, and USERRA.

personally signed the loan as guarantor and pledged your home as collateral.

Please join or support ROA.

This article is one of 2,300-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. We add new articles each month.

ROA is the nation’s only national military organization that exclusively and solely supports the nation’s reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve (32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).¹³

ROA is more than a century old. On 10/2/1922, a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War,” invited junior officers who had served under him in Europe to the meeting. One of those junior officers 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 adequate national security. For more than 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.

¹³ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

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 advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and staffers, and others about the legal rights of service members and about how to 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 eight¹⁴ uniformed services, you are eligible for membership in ROA,¹⁵ 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 <https://www.roa.org/page/memberoptions> 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
Washington, DC 20002¹⁶

¹⁴ Congress recently established the United States Space Force as the eighth uniformed service.

¹⁵ Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.

¹⁶ You can also contribute on-line at www.roa.org.