PUBLICATION

State Attorneys General Bringing Actions Under Dodd-Frank

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As the CFPB celebrates its three-year anniversary, the current trend appears to be lawsuits brought by state attorneys general or state regulators pursuant to their authority under Dodd-Frank Section 1042. Under Section 1042, a state regulator or attorney general is authorized to bring a civil action for a violation of the Dodd-Frank prohibition of unfair, deceptive or abusive acts or practices (UDAAP). Recently lawsuits have been filed by state attorneys general in three different states: Illinois, New York and Mississippi.

Illinois

In March 2014, the Illinois attorney general filed a state lawsuit against a small lender, CMK Investments, Inc., alleging that the lender is evading the state's 36% interest rate cap by offering a short term loan product that acts like a revolving line of credit but offers none of the protections of a credit card. According to the Complaint, the company thwarts the state interest rate cap by tacking on bogus "required account protection fees." When the extra fees are factored into the total cost of the short-term loan, the interest rates soar to 375 percent, and sometimes up to more than 500 percent. It also alleges that the lender instructed borrowers to make a monthly minimum payment, but did not apply any of the minimum payment toward principal. In April 2014, the case was removed to the Illinois federal court and in May 2014, a motion to dismiss was filed, which is now pending before the court.

In January 2012, the Illinois Attorney General filed a lawsuit against for-profit college Westwood College, alleging that Westwood used deceptive marketing that left students with thousands of dollars of debt and limited job opportunities. The lawsuit alleges that, through marketing its criminal justice program, Westwood falsely convinced students they could pursue a law enforcement career with such agencies as the Illinois State Police and suburban police departments, even though those employers do not recognize a Westwood degree due to its lack of regional accreditation. Additionally, because Westwood is not recognized by regionally accredited colleges, students found they could not transfer their coursework to alternative programs to complete a degree. Lacking a regionally accredited degree and unable to transfer their coursework, Westwood students were left with anywhere from $50,000 to $70,000 in student loan debt.

The state recently filed a motion in a state court seeking leave to further amend its complaint to add new counts alleging that the defendants' practices were unfair and abusive under Section 1042 of Dodd Frank. The second amended complaint added an allegation that the defendants knew but failed to inform prospective students that a majority of students enrolled in the academic program default on the in-house financing. The motion to amend was granted in May 2014. At the hearing on the state's motion to amend the complaint, the defendants indicated that they planned to file a motion to dismiss the complaint. The court has set a briefing schedule for the motion, with oral argument scheduled for July 2.

On July 14, 2014, the Illinois attorney general filed two lawsuits, one against First American Tax Defense, LLC and another against Broadsword Student Advantage LLC. The complaints allege that the unlicensed companies engaged in deceptive marketing practices and illegally charged consumers up-front fees to reduce or eliminate their student loan debt burden using methods available directly to the borrowers. The services that defendants offered for a fee are available free of charge from governments services. The lawsuits allege the companies are in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, the Credit Services Organizations Act, and the Debt Settlement Consumer Protection Act.

New York

On April 23, 2014, Benjamin Lawsky, Superintendent of the New York State Department of Financial Services, filed a complaint in the U.S. District Court of New York against Condor Capital Corporation, a subprime indirect auto lender, and Stephen Baron, Condor's Chief Executive Officer and sole owner. The complaint alleges that Condor stole funds from its auto loan customers and compromised the personal information of its customers, engaging in unfair, deceptive, and abusive acts and practices. The state won its motion for a temporary restraining order, freezing Condor's accounts and operations. On June 20, 2014, an intervenor complaint was filed by Condor's secured lender seeking a declaratory judgment as to its lien status and its right to exercise various rights and remedies under its loan agreement with Condor.

Mississippi

The most recent lawsuit was filed in Mississippi in May 2014. The lawsuit accuses Experian of knowingly including erroneous data in the credit files of millions of Americans, threatening their ability to obtain loans and sensitive government security clearances, and tainting employment-related background checks. It further alleges that Experian has even wrongly reported that consumers are on a federal terrorism watch list. The complaint also states that when consumers dispute alleged inaccuracies in their credit reports, Experian and the other agencies failed to conduct reasonable investigations concerning consumers' disputes; indeed, in many cases, failing to conduct *any* investigation of consumer disputes regarding their credit history or accounts. It is alleged that when consumers file a dispute, Experian reflexively finds in favor of the bank or debt collector that reported the debt and that Experian employees attempt to sell consumers credit-monitoring products of questionable value. In June 2014, Experian removed the case to a federal district court. Earlier this month, the attorney general filed an amended complaint that includes new allegations regarding deceptive marketing practices by Experian.

These lawsuits are significant because their outcomes will likely indicate the types of lawsuits that could be possibly brought by the CFPB in the future.