



Look at me, I'm the Captain Now – Turning the CFPB Ship Around

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“Look at me, I’m the Captain now” is a quote from the movie Captain Phillips, in which an American cargo ship is hijacked by Somali pirates. The Captain of the cargo ship, Captain Phillips, has his world (seas?) shattered and authority usurped when one of the pirates tells the Captain to look him in the eyes and says he’s the Captain now. It was a great scene and line that carried over to the Oscars and spawned many a meme. If I’m an employee at the CFPB these days, I’d be feeling that our ship is under attack, was hijacked by Republican and/or conservative “pirates” and ordered to turn around.

What are some of these strikes against the CFPB? Here’s a brief sampling:

1. Congress scrapped its Arbitration Rule under the Congressional Review Act (“CRA”) – the CFPB is now barred from adopting a “substantially similar” rule on arbitration unless Congress specifically allows it.
2. Its Captain, Captain Cordray, announced he was stepping down, left earlier than planned and, in a late Friday afternoon move, hand-picked his successor. Heck, he not only left the ship, he left the state, and is now running for Governor of Ohio.
3. Cordray’s hand-picked successor, Leandra English, is waging a heated legal battle to get control of the CFPB. If English loses her next hearing, she will most likely appeal. However, the damage has been done. Her “appointment” caused dissension among the CFPB staff, anger and resentment toward Cordray for hand-picking someone so young and without the requisite experience to lead an agency that size.
4. President Trump named a staunch critic of the CFPB, Mick Mulvaney, to now run the agency. You may remember that Mulvaney called the CFPB a “sad, sick joke.” Mulvaney may have brought donuts on his first day on the job at the CFPB, but also signaled drastic changes are coming for the Bureau.
5. Emboldened by its latest efforts under the CRA, Congress is now aiming at CFPB’s payday lending rule – a bipartisan group of House members introduced a bill to strike the rule under the CRA. Mulvaney also supports overturning the rule.
6. The Government Accountability Office (“GAO”) effectively eliminated the CFPB’s indirect

auto lending “guidance” for auto creditors – the GAO said the CFPB’s 2013 Bulletin putting indirect auto creditors on the hook for unintentional discrimination by dealers under a disparate impact theory was a general statement of policy and a rule under the CRA. The rule must be resent by the CFPB to Congress. Mulvaney is unlikely to resubmit it to Congress. Even if resubmitted however, Republications may be able to garner enough votes to repeal the “rule” under the CRA.

These attacks are not only coming from these “pirates,” they are also coming from the CFPB’s former ship mates. A former CFPB Examiner, Cassandra Jackson, recently sent a letter to U.S. Attorney General Jeff Sessions requesting an investigation into the falsifying of examination reports by CFPB management and for civil rights violations. Ms. Jackson was employed at the CFPB from 2011 – 2016 as an examiner in the Southeast Division. She claimed to have conducted over 30 examinations of various types of financial institutions. During her time at the CFPB, Ms. Jackson participated in the examination of Ace Cash Express in Irving, Texas. Ms. Jackson alleges she was asked by her supervisors to change, remove and otherwise falsify documents connected with the examination. She also claimed she was asked to remove documentation that the lender provided as evidence to support their initial examination report and to including examination findings that she knew to be false and fabricated. When Ms. Jackson refused to falsify the report, she claims her supervisor changed the information in the report and signed off on the final report herself. Ms. Jackson claims this was an attempt to construct a report that could be used to justify a previously agreed on \$5 million civil penalty and up to another \$5 million in customer refunds against the lender. Ms. Jackson claims she was retaliated against by CFPB management with disciplinary measures and harassment.

In addition to these attacks and losses, the Captain Mulvaney his signaled a dramatic shift at the CFPB. He’s recently been quoted as saying: *“This place will be different, under my leadership and under whoever follows me.”* And boy, he wasn’t kidding. In just his first two weeks at his new position, he has made some swift and dramatic changes, for example:

He imposed a 30-day freeze on the hiring of new CFPB employees, a hold on activity at the CFPB while he evaluates its activity and stopped approval of payments to some financial crime victims. He will also try to marry the senior staffer for every major “branch” of the CFPB, from enforcement, rulemaking, education to legal, with a political appointee.

Further, he announced he would be conducting a review of all enforcement matters, litigation, concluded investigations and ongoing investigations. Some matters, he indicated, may be abandoned.

He’s also has suspended or softened several investigations and lawsuits. For example, a recent CFPB filing asking a judge to force Nationwide Biweekly Administration to post an \$8 million bond while the final proceedings were wrapped up was withdrawn with a new two-sentence brief that the CFPB no longer took a position on whether Nationwide should put up the cash for the bond. It was reported that the Bureau’s withdraw of its request for Nationwide to post a bond had some at Mulvaney’s direction. Further, the CFPB also suspended its investigation into Nexus Services Inc., an immigration bond company, while a court determines whether the Bureau has authority to demand thousands of pages of personal information about Nexus’ customers via its Civil Investigative Demand.

Some employees at the Bureau are quietly resisting, having formed a sort of “Dumbledore’s Army” to resist the new Captain at the helm. The mutiny will likely quickly be crushed as this new

Captain will be around for a long while to steer the CFPB ship around to one that takes a lighter touch to regulating the industry.

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