



The CFPB's Future is Unclear, but Its \$42 Million Judgment Still Sends a Clear Message

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If we could use only one word to describe the future of the Consumer Financial Protection Bureau, I think most of us would agree on the word “uncertain.” However, one thing seems certain to occur as we wait to see what will happen with the CFPB: a rise in state enforcement efforts.

As he was wrapping up his time at the CFPB, former Director Rohit Chopra was anticipating and supporting these efforts. Before Chopra left the CFPB, he and former CFPB General Counsel Seth Frotman published an article in the *Harvard Law School Journal on Legislation*, titled “State Enforcement as a Federal Legislative Tool.” In the article, Chopra and Frotman stressed the power of states to enforce federal consumer protection laws against entities covered by the Consumer Financial Protection Act. According to the article, to date, states have brought about 50 enforcement actions under this authority. The enforcement actions involved a diverse group of laws and claims, regardless of the political party of state officials. Additionally, the article supported the continuation of robust state enforcement actions and offered grounds for such actions.

On January 14, 2025, the CFPB issued new recommendations to the states in a blog post titled “Strengthening State-Level Consumer Protections.” As part of the blog post, the CFPB released a report on how states can strengthen their state law protections as well as a compendium of guidance documents, including CFPB circulars, bulletins, advisory opinions, and interpretative rules. The report and the compendium were published to provide guidance to state legislative and enforcement bodies, in addition to courts handling consumer protection matters.

Finally, as a result of the recent layoffs of many enforcement attorneys at the CFPB, former staff members are now looking for new employment with consumer advocacy organizations, plaintiffs’ attorney law firms, and state attorneys general. As states are gearing up with more resources and human power, we are expecting to see the CFPB’s types of attacks against companies shift to the states.

As an example of the types of attacks the CFPB has unleashed on companies, last November, the CFPB ordered a Georgia-based auto finance servicer to pay \$25.5 million in compensatory damages, \$7.1 million in restitution and prejudgment interest, and a civil penalty of \$10 million as result of a lawsuit brought by the CFPB. The CFPB’s original complaint alleged that the servicer engaged in unfair acts and practices including wrongfully activating starter-interrupt devices, failing to ensure refunds of guaranteed asset protection premiums when consumers prepaid their contracts, erroneously billing consumers for collateral protection insurance by charging them twice each billing cycle, misapplying payments, and wrongfully repossessing vehicles.

Twenty-three days after the complaint was filed, the servicer filed a bankruptcy petition and sought to stay the CFPB's lawsuit under the Bankruptcy Code's automatic stay provision, which provides that "certain judicial, administrative, or other actions" are stayed by the filing of a bankruptcy petition. The CFPB continued to pursue its legal action notwithstanding the bankruptcy filing, claiming that the case was exempt from the automatic stay as an exercise of the government's police and regulatory power.

The district court sided with the CFPB and continued with the proceeding, which resulted in the \$42 million default judgment. The CFPB's efforts in pursuing an action against an entity in bankruptcy, which will never operate again, according to the bankruptcy trustee, send a clear message to the industry: bankruptcy does not shield you from CFPB enforcement actions. The CFPB sends an even stronger message to the states: you shall follow our steps and proceed with enforcement actions despite bankruptcy.

Finally, it's worth mentioning that Christopher Kukla, in his capacity as the CFPB's Auto Finance Senior Program Manager, filed a declaration with the court that provided calculations to determine penalties. The declaration estimated harm per wrongful repossession at \$5,000, harm per erroneous vehicle disablement at \$500, and harm caused by erroneous warning tones at \$100 per day. The court ultimately relied on the damages estimate of a wrongful repossession from Kukla. The court's reliance on a repossession estimate from the CFPB is unprecedented and alarming.

The Biden-era CFPB might be gone, but states and plaintiffs' attorneys will not ignore the loud and clear message the old CFPB left behind. The CFPB's final enforcement actions continue to set the stage for upcoming lawsuits and offer valuable information about the litigation tactics that will likely be used by plaintiffs' lawyers, state regulators, and state AGs.