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Starter Interrupters Expose Lenders To SCRA Risks

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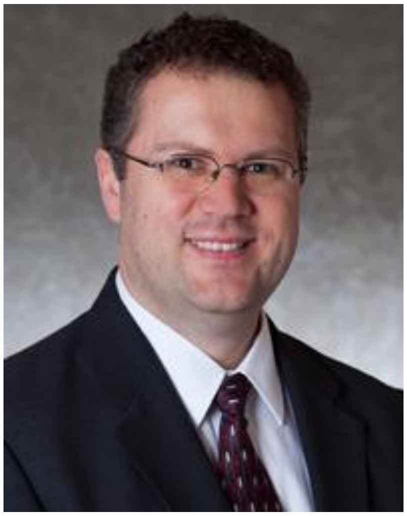
Kirk D. Jensen

Individuals often take great care to make a good impression on a first date, but sometimes that's just not possible. Oscar Fabela Jr. was walking his date back to his car after a movie when he found that his car would not start.[1] This was not caused by any mechanical malfunction, but rather by the creditor on his auto loan. As a condition of taking out the loan, Fabela was required to install a starter interrupter on his vehicle. Because the creditor believed that Fabela was late in making his monthly payment, the creditor disabled Fabela's car remotely — even though Fabela was actually current on his payments. Fabela and his date then spent the rest of the evening finding a way to bypass the starter interrupter so they could leave the parking lot.

While several articles over the past few weeks have considered the legal and privacy implications of starter interrupters, none has considered the potential risks that starter interrupters may pose for creditors under Section 532 of the Servicemember's Civil Relief Act (SCRA).[2]

A starter interrupter allows a creditor to disable the engine's starter motor remotely, thereby preventing the borrower (or anyone else) from driving the car.[3] Starter interrupters can either be manually triggered once a borrower falls behind on his or her loan payments, or they can be activated through a program that tracks the borrower's payments and automatically disables the car if the borrower fails to make a scheduled payment.[4] Creditors often provide borrowers with emergency codes that bypass the starter interrupter if the vehicle has been disabled, but some consumers have complained that these codes can expire or simply do not work.[5]

Usually, when a borrower defaults on their auto loan payments, the creditor will initiate the process to seize or repossess the vehicle under the terms of the auto loan or retail installment sales contract. Starter interrupters simplify this process; instead of paying for someone to track down the vehicle on the open road, the creditor simply disables the vehicle in one location and collects it.[6]

In this way, starter interrupters serve an important purpose: by making it more efficient to reclaim the vehicle securing a loan in default, starter interrupters permit creditors to extend credit to borrowers who are at a much higher risk of default. Indeed, without starter interrupters, many of these borrowers would be entirely priced out of the auto loan market.[7]

As the subprime auto loan market has grown over the past few years, so too have the number of starter interrupters in use. According to a recent New York Times story, these devices have been installed in approximately 2 million vehicles and are used in about one-quarter of all subprime auto loans.[8] With the expanded prevalence of starter interrupters, however, creditors have also seen an uptick in concerns about their usage; borrowers have complained that their vehicles were disabled while driving on the freeway, while idling in a dangerous part of town, and when borrowers were current on their payments.

Although starter interrupters have been around since the 1990s,[9] courts and regulators have not yet explored all of the legal implications surrounding this technology, and we are aware of no cases discussing the SCRA implications of utilizing a starter interrupter system. Although regulators have focused their SCRA activities primarily upon home mortgage loans, they have also focused on other types of consumer lending, including auto loans.[10]

If a borrower makes a payment prior to entering active duty, Section 532 bars a creditor from terminating an installment contract for purchase or lease or repossessing an automobile while the borrower is on active duty without first obtaining a court order.[11] There are good arguments that a starter interrupter is not the equivalent of a repossession, and should not raise SCRA issues. Nevertheless, given the lack of past judicial focus on the interplay of starter interrupters and the SCRA, creditors may be well-served to consider the implications of their use in light of these protections.

Alleged violations of Section 532 can be extremely costly for creditors. In a recent SCRA settlement with the U.S. Department of Justice, one financial institution was required to compensate borrowers who had a vehicle allegedly repossessed in contravention of Section 532 by paying (1) a base amount of $10,000; (2) any lost equity in the repossessed vehicle; and, (3) any interest accrued on the lost equity.[12] In settlements like these, DOJ and other federal regulators require borrower remediation even if the creditor was unaware that the borrower was on active duty.

Given the ease of remotely activating a starter interrupter on a borrower's car,[13] the significant number of service members who take out subprime auto loans, and the government's aggressive approach to SCRA enforcement, creditors should use starter interrupters with care. Without appropriate measures in place to comply with the SCRA, auto loan servicers may expose themselves to unnecessary — and significant — legal risk.

—By Kirk D. Jensen, John C. Redding, Sasha Leonhardt and Alex Dempsey, BuckleySandler LLP

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[1] Michael Corkery and Jessica Silver-Greenberg, Miss a Payment? Good Luck Moving That Car, N.Y. TIMES, Sept. 25, 2014.

[2] 50 U.S.C. app. § 532 (2010).

[3] These devices can also be used to track the vehicle's location through the use of a Global Positioning System.

[4] Ralph J. Rohner, Leasing Consumer Goods: The Spotlight Shifts to the Uniform Consumer Leases Act, 35 CONN. L. REV. 647, 735 (2003)

[5] See In re Hampton, 319 B.R. 163, 167 (Bankr. E.D. Ark. 2005).

[6] See generally Quik Find Plus Inc. v. Procon Inc., No. 3:09-CV-184, 2010 WL 2158808 at *1(E.D. Tenn. May 25, 2010). Many starter interrupters also simplify the collection process though a GPS chip that lets the creditor know exactly where the car is located at all times — including once it has been deactivated.

[7] Alison Griswald, Subprime Auto Lenders Are Using This Terrifying Device to Track Their Borrowers, SLATE MAG. (Sept. 25, 2014, 6:19pm), http://www.slate.com/blogs/moneybox/2014/09/25/subprime_auto_loans_lenders_stop_cars_when_payments_aren_t_made.html.

[8] Corkery, supra note 1.

[9] Jim Henry, Lenders Must Look Through Consumers' Eyes, AUTOMOTIVE NEWS (Oct. 1, 2014, 12:01am), http://www.autonews.com/article/20141001/BLOG13/140939979/lenders-must-look-through-consumers-eyes

[10] For a detailed discussion of how the SCRA may apply to auto loans, please see Kirk D. Jensen, John C. Redding, and Sasha Leonhardt, Highway to the Danger Zone: Automotive Lending and the Servicemembers Civil Relief Act, 131 BANKING L.J. 126 (2014).

[11] See generally 50 U.S.C. app. § 532.

[12] Consent Order at ¶ 33, United States v. Capital One, No. 1:12-cv-00828 (E.D. Va. July 27, 2012), ECF No. 2.

[13] In some instances, a creditor can even activate a starter interrupter through a smartphone. One employee noted that he was able to "disable[] a car while I was shopping at Walmart." Corkery, supra note 1.
