

TUESDAY, JULY 1, 2014

COVER STORY

## CFPB could be teeing up wave of civil litigation



Alexander Drecun / Special to the Daily Journal

Christine A. Scheuneman, of Pillsbury Winthrop Shaw Pittman LLP, says consumer protection investigations will be fair game for plaintiffs lawyers.

By Chase Scheinbaum / Daily Journal Staff Writer

As it polices the financial products industry, the Consumer Financial Protection Bureau makes public the results of its investigations — a fact not lost to attorneys on both sides of the bar. In its third year in existence, the agency, created by Congress in 2012, has begun to shed some light on the industry's inner workings. Plaintiffs' and defense attorneys are keenly aware that the young bureau's findings could become a new engine for civil litigation, though it remains unclear how significant it might be.

"They have broad powers and when they do an investigation it can be very in-depth and with a lot of detailed information," said Christine A. Scheuneman, a defense attorney with Pillsbury Winthrop Shaw Pittman LLP. "Certainly all this is fair game for plaintiffs' attorneys."

Financial company executives, she said, worry an enforcement action from the bureau could lead to additional headaches in the form of consumer litigation.

"In the plaintiffs' bar, attorneys are certainly talking about, 'How are we going to deal with this, and what are the resources we can use to go after these companies?'" Scheuneman said.

Though there has yet to be a landslide of suits, Scheuneman pointed to a June 19 order by the bureau for GE Capital Retail Bank, now called Synchrony Bank, to pay \$225 million for discriminatory acts in credit card practices.

If plaintiffs' attorneys seize upon investigations that culminate in large settlements, such as that one, consumer lawsuits could greatly compound the damages.

Jeff Westerman of Westerman Law Corp., a plaintiffs' attorney who specializes in financial litigation, agreed about the importance of the reports. "We all know it's something to look at and we all want to find new ideas," he said. "Any one of those things [in CFPB reports] can expose something that leads to cases."

Though he believes it will take time for attorneys to find suitably egregious and lucrative causes, John C. Torjeson, of John C. Torjeson and Associates PC, concurred the bureau's investigations could serve as fodder for himself and other fellow plaintiffs' attorneys.

"They can take the lead on identifying harms and let other people bring other actions for recoveries,"

he said. "It'll be good to see what the government pulls up."

In its most recent report, published in the spring, the agency, whose logo is a flashlight beam across the letters CPFB, states that it filed 31 enforcement actions between October 2013 and March 2014. An overwhelming number of actions focused on mortgage loans. Others targeted credit card, consumer debt and debt relief schemes. Unfair targeting of minority populations is a recurring theme the agency seems to have pursued. Investigations results become public when the bureau has taken an enforcement action.

The bureau is capable of levying fines and ordering companies to amend practices. But those actions may not directly help consumers who believe they were treated unfairly.

"The government doesn't necessarily turn the money over to victims," Westerman said. "Even if there is relief, it doesn't necessarily mean complete relief."

The nature of the industry means civil actions will likely take the form of class actions, attorneys said.

Though plaintiffs' attorneys might salivate at the thought of peeking into government investigations, Scheuneman said they may not necessarily strike gold.

"Many of the industries that touch consumers were ahead of the curve and saw this coming and did make changes to their businesses," she said.

From a plaintiff's perspective, even within an exhaustive investigation report, finding a suitable claim will not be easy, Torjeson said. And the complicated nature of the investigation and potential claims arising from it should not be overlooked. Dense financial material doesn't always make for headline-grabbing lawsuits that win jurors' hearts.

"This isn't a bad tire," he said. "You can tell the story to someone and it'll go right through them."

Plaintiffs will likely look for causes that are "direct in terms of causation," he said. "You're going to have to persuade somebody that a wrong was done and caused harm."

From a plaintiff's perspective, the bureau's reports may have many good attributes, Torjeson said.

"It gets your foot in the door because the judge is going to ask what you have. It's nice to have somebody taking the lead on a critical issue. Finance stuff is not easy."

Scheuneman, the defense attorney, cautioned that adding litigation to steep fines or other legal action could be dire for financial services companies and shareholders.

"Some of these orders can be pretty draconian," she said. "And sometimes it's so onerous in terms of the fine they levy that the question is: Do you really want to put that company out of business?"