

[Banking and Finance Law Daily Wrap Up, ENFORCEMENT ACTIONS—S.D.N.Y.: New York, RD Legal dispute effect of CFPB constitutionality decision, \(Jul. 11, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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By [Richard A. Roth, J.D.](#)

The New York Attorney General does not want any delay in its enforcement suit against a structured settlement factoring organization, while the organization is more willing to follow a slower pace so the suit can follow "a single track." The [joint letter](#) from the AG's office and attorneys for RD Legal Funding LLC and associated persons offers contrasting ideas on how to handle the apparent conflict that arose when a U.S. district judge decided that the Consumer Financial Protection Act—Title X of the Dodd-Frank Act—is unconstitutional (see [Banking and Finance Law Daily](#), June 22, 2018).

The AG and the Consumer Financial Protection Bureau have sued RD Legal Funding, two other companies, and an associated individual, claiming that they violated state laws and the CFPB in the process of exchanging structured settlements for lump-sum payments. The U.S. district judge decided that the Bureau's organization is unconstitutional, meaning the Bureau has no authority to sue the company. She also decided that the organizational section of the CFPB cannot be severed from the remainder of that Act; as a result, she ruled that the entire CFPB is unconstitutional.

However, the judge then declined to dismiss the suit in its entirety, saying that the CFPB—which she had said was unconstitutional—allows the AG to bring an enforcement suit in federal court.

Delay for Bureau appeal? In the joint letter, which the judge called for to learn how the AG and companies want to proceed, the AG says it wants to move forward without any delay. However, the Bureau apparently has not yet decided whether it wishes to appeal the constitutionality decision immediately. If the Bureau wants to take that step, RD Legal is asking the judge to certify the order dismissing the Bureau for an immediate appeal and stay the remainder of the suit. The AG disagrees with allowing an immediate appeal.

The joint letter implies that the AG interprets the judge's order as striking down the Bureau's structure but not the entire CFPB. In that way, the U.S. district judge still would have subject matter jurisdiction over the CFPB claims and supplemental jurisdiction over the state law claims. The companies, however, apparently believe there no longer is a basis for federal question jurisdiction. They intend to address the jurisdiction issue in a separate motion.

The case is No. 17-cv-890.

Attorneys: Benjamin Zachary Konop for the CFPB. Melvin L. Goldberg, Office of the Attorney General, for People of the State of New York. Eric Todd Kanefsky (Harris, St. Laurent & Chaudhry LLP) and Jeffrey M. Hammer (McDermott Will & Emery LLP) for RD Legal Funding LLC, RD Legal Funding Partners, LP and RD Legal Finance, LLC.

Companies: RD Legal Funding LLC; RD Legal Funding Partners, LP; RD Legal Finance, LLC

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