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# Husch Blackwell's Amicus Brief Aids in Fourth Circuit Win for Auto Finance Industry

In a decision interpreting the scope and effect of the Military Lending Act (MLA), the U.S. Court of Appeals for the Fourth Circuit confirmed that the plain language of the MLA excludes from its coverage an auto finance transaction that finances the purchase of a vehicle and a Guaranteed Asset Protection (“GAP”) waiver.

In *Davidson v. United Auto Credit Corporation*, the Fourth Circuit has affirmed the decision of the Eastern District of Virginia dismissing a putative class action that attempted to bring such a transaction within the MLA. Husch Blackwell attorneys Marci Kawski and Lisa Lawless filed an amicus curiae brief on behalf of several national industry trade associations in the Fourth Circuit.

In his complaint, the plaintiff alleged that while he was on active-duty status with the Army, he purchased a vehicle from a dealership in Fredericksburg, Virginia, and entered into a retail installment contract to finance the purchase of the vehicle, as well as a Guaranteed Asset Protection waiver, a processing fee, and pre-paid interest. The plaintiff argued United Auto Credit violated the MLA because the retail installment contract is consumer credit subject to the MLA as a result of the financing of GAP waiver and other items. GAP waivers are regularly offered to all consumers, including members of the military, when they finance the purchase of their vehicle. The plaintiff sought, among other remedies, a ruling declaring the retail installment contracts of the putative nationwide class were void.

The district court dismissed the case, citing that the MLA only applies to “consumer credit” and that the plaintiff’s retail installment contract was not “consumer credit” because the contract falls within the MLA’s auto-finance

exception to the definition of “consumer credit.” By its terms, the MLA does not apply to financing procured in the course of purchasing a car when the financing is offered for the express purpose of financing the purchase and is secured by the car.

Davidson appealed to the Fourth Circuit. In that appeal, Husch Blackwell filed an amicus curiae brief arguing that the plain language of the MLA does not extend to the kind of transactions between United Auto and plaintiff, the original purpose of the MLA did not apply to retail installment contracts that finance items like GAP waiver, and the ability of a servicemember to purchase and finance a vehicle and items like GAP waiver strongly benefit members of the military and support military readiness. The amicus brief was filed on behalf of the American Financial Services Association, Consumer Bankers Association, National Automobile Dealers Association, Guaranteed Asset Protection Association, Consumer Credit Industry Association, and the U.S. Chamber of Commerce.

Applying the plain language of the MLA, the Fourth Circuit agreed and ruled that the retail installment contract that financed the purchase of a vehicle and GAP waiver “is for the express purpose of financing the car purchase” and, therefore, does not fall within the definition of consumer credit covered by the MLA.

“This had the makings of game-changing litigation,” Kawski said. “If the plaintiffs were successful in their appeal, it would have overturned the long-held interpretation of the MLA, adversely affected members of the military, disrupted current business practices, and impacted the secondary market. We are pleased with the Court’s decision.”