



I.
INTRODUCTION

Great sacrifices are made by the men and women who serve honorably in our armed services protecting this nation. Along with the sacrifices of military personnel, a servicemember's dependents sacrifice mightily as well. At least since the Civil War, Congress and many states have enacted remedial legislation designed to protect "those who dropped their affairs to answer their country's call."¹ In one of the earliest cases relating to the Soldiers and Sailors Civil Relief Act (SSCRA), amended and renamed the Servicemembers Civil Relief Act (SCRA) in 2003, the Supreme Court, in *Boone v. Lightner*,² noted, "The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation."³ This allows the servicemember to devote his/her "entire energy to the defense of the nation"⁴ in a manner "unhampered by obligations incurred prior to their call."⁵

In response to the financial distress placed on personnel by the call-up of the Reserves and the National Guard in Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), Congress enacted the SCRA, a broad-ranging remedial act that in many instances enlarged protections that existed under the SSCRA. Although several excellent articles exist on the scope and application of the SCRA, this is one of the first attempts to look at the Act's application to bankruptcy law and process. For example, what rights, duties and obligations exist once a debtor who has sought relief under title 11 of the U.S. Code (the Bankruptcy Code) is called to active duty and sent abroad? Is the case stayed from any further action? If so, for how long? May a secured creditor seek relief from the automatic stay in bankruptcy to foreclose the lien on its collateral? What are the issues posed by a bankruptcy case in which a servicemember called to active duty possesses a claim against the estate?

¹ *LeMaistre v. Leffers*, 333 U.S. 1, 6 (1948).

² 319 U.S. 561, 63 S.Ct. 1223, 1231, 87 L.Ed. 1587 (1943).

³ *Boone*, 319 U.S. at 575, 63 S.Ct. at 1231.

⁴ *Engstrom v. First National Bank of Eagle Lake*, 47 F.3d 1459, 1462 (5th Cir. 1995).

⁵ *Omega Industries Inc. v. Raffaele*, 894 F.Supp. 1425, 1434 (D. Nev. 1995).

May the status, amount, validity and allowance of the claim be adjudicated? May the servicemember's claim be discharged? May the bankruptcy case continue in its own right?

In addition to bankruptcy procedural issues, a servicemember, his/her attorney or a court may have to confront questions about debt obligations and taxes. For example, what rights does a servicemember have in regard to leases and installment contracts entered into before being called to active duty? May a servicemember terminate certain leases without further obligation? May a servicemember invoke certain financial protections when called to active duty? If so, what are those financial obligations, how are they invoked, and are there any exceptions or limitations? Finally, what rights does a servicemember have in relation to taxes and the taxing authority? Does it matter what type of tax is in dispute?

In this book, we address these and other questions. Since 2001, both authors have represented a number of servicemembers on a pro bono basis both in and out of bankruptcy court. This book draws from that experience, particularly our struggles and missteps, as we sought to advance servicemember protections in the bankruptcy and financial distress context. In Chapter II of this book, we present the history and purpose of the SCRA. The purpose of an extended discussion is that with all remedial statutes that are liberally construed, purpose guides discretion, and discretion is necessary at the margins of application. Moreover, history informs present thought and provides deep moorings for modern applications. This is especially the case, as here, the present version of the Act substantially mirrors past versions.

In Chapter III, we explain to whom the SCRA applies and in what contexts. The protected class is not self-evident; there are cases where members of the armed forces are not protected, even where they may otherwise have been activated—*i.e.*, ordered to active-duty status. Moreover, there are situations where non-military personnel are covered, although limited in scope.

In Chapter IV, we explore the procedural protections provided by the SCRA. After introducing the basic tenets of default protection, tolling of statutes of limitation and the SCRA stay, we analyze those procedural protections in the bankruptcy context.

In Chapter V, we address the substantive protections of the SCRA, exploring the application of the Act to lease and mortgage obligations, the interest-cap protection on certain financial obligations, and tax obligations. Although the SCRA addresses issues relating to marriage, divorce or child custody, those topics are beyond the scope of this book.⁶

In Chapter VI, we address Bankruptcy Code provisions that specifically respond to issues unique to debtors in military service.

In Chapter VII, we consider the taxation issues unique to servicemembers. Finally, in Chapter VIII, we address the perplexing yet interesting issue of anticipatory relief. We close the book with a copy of the Act, a section index and several forms that one may use to invoke certain protections under the Act, among other things.

⁶ The SCRA is found at 50 U.S.C. App. §§501-596. However, the SCRA is often referred to in the enacted bill by its internal sections, which are numbered from 101-706. For consistency and ease of use, we will use the section identifications actually found in the U.S. Code where possible.