

[Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—S.D.N.Y.: Dispute continues over effect of CFPB constitutionality decision, \(Aug. 14, 2018\)](#)

Banking and Finance Law Daily Wrap Up

[Click to open document in a browser](#)

By [J. Preston Carter, J.D., LL.M.](#)

In letters to the U.S. District Court for the Southern District of New York, the Consumer Financial Protection Bureau and the New York Attorney General dispute whether the NYAG's Consumer Financial Protection Act claims can proceed against RD Legal Funding based on the court's June order finding the CFPB structure unconstitutional. RD Legal Funding submitted a letter motion to the court on August 3, asking it to dismiss the NYAG's claims based on the court's June order (see [Banking and Finance Law Daily](#), Aug. 7, 2018).

CFPB motion for final judgment. The CFPB, in an August 10 [letter](#) to the court, seeks to file a Rule 54(b) motion for entry of a final judgment in the case, also based on the court's June order. The Bureau contends that the requirements for certifying a final judgment are met: the action involved two plaintiffs (the Bureau and the NYAG); the June order dismissing the Bureau from the case resolved the Bureau's claims; and "there is no just reason for delay—both the equities to the parties and the court's interest in sound judicial administration and efficiency weigh heavily in favor of entering a final judgment."

The Bureau argues that the order dismissing the Bureau from the case but allowing the NYAG to proceed with its CFPA claims "deprives the Bureau of its statutorily-assigned right to participate in the litigation of CFPA claims brought by state regulators." It also contends that: requiring the Bureau to wait to appeal would be inequitable to the defendants who would face a greater risk of suffering the expense of defending two overlapping trials; duplicative trials would be contrary to judicial administrative interests; and the issues of the constitutionality of the for-cause removal provision in the Bureau's organic statute and whether that provision is severable are "separable" from the issues that remain to be decided.

NYAG responds to RD Legal and Bureau. In its August 13 [letter](#) to the court, the NYAG responds to RD Legal Funding's August 3 letter and the CFPB's August 10 letter. Regarding RD Legal's letter motion, the NYAG states that, in the court's June order, "The Court denied RD Legal's motion to dismiss, including for the NYAG's CFPA claims," and that "RD Legal now tries to reimagine that the Court actually intended to dismiss all CFPA causes of action." The NYAG added that, "Even if the Court were to now reverse itself and hold that this Court does not have subject matter jurisdiction over the NYAG's CFPA claims and that the NYAG cannot bring claims pursuant to the CFPA, this Court still has original subject matter jurisdiction based upon the embedded federal questions in the NYAG's state law claim."

Furthermore, the NYAG argues that, even without original jurisdiction, the court could exercise supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, to decide the NYAG's state law claims. "Balancing judicial economy, convenience, fairness, and comity argues for retaining jurisdiction of the state law claims," the NYAG contends.

Finally, the NYAG argues that, regardless of whether the court enters a final judgment pursuant to Rule 54(b), it should move towards resolution of both the NYAG's CFPA claims and non-CFPA claims, and should not issue a stay: "Those wronged by RD Legal include consumers who are ill and in deteriorating health, and further delay will exacerbate the harm."

The case is No. 17-cv-890.

Attorneys: Benjamin Zachary Konop for the CFPB. Jeffrey M. Hammer (McDermott Will & Emery LLP) and Michael Dietz Roth (Caldwell Leslie & Proctor, PC) for RD Legal Funding LLC, RD Legal Finance, LLC and RD Legal Funding Partners, LP.

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

LitigationEnforcement: CFPB DoddFrankAct EnforcementActions NewYorkNews StateBankingLaws