

[Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—S.D. Fla.: Ocwen's proposed schedule, request for AG's views denied in CFPB litigation, \(Jun. 5, 2017\)](#)

Banking and Finance Law Daily Wrap Up

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By [Thomas G. Wolfe, J.D.](#)

In the Consumer Financial Protection Bureau's enforcement lawsuit against the Ocwen companies, the U.S. District Court for the Southern District of Florida has rejected Ocwen's request to set an early case management conference for the purpose of having the court initially address the constitutionality of the CFPB before addressing the merits of the CFPB's action. Likewise, finding that it would be "premature" at the present juncture in the litigation to invite the views of the U.S. Attorney General in connection with Ocwen's desired constitutional challenge, the court preliminarily denied Ocwen's request and held the motion "in abeyance" (*Consumer Financial Protection Bureau v. Ocwen Financial Corporation*, June 2, 2017, Marra, K.).

The litigation stems from the CFPB's claim that Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, and Ocwen Mortgage Servicing, Inc., violated multiple consumer financial protection laws when servicing mortgages, and Ocwen is seeking to convince the federal district court to consider a challenge to the CFPB's constitutionality in advance of any other issues (see [Banking and Finance Law Daily](#), May 10, 2017).

Case management. In denying Ocwen's April 2017 [Motion for Early Case Management Conference](#), the court determined that Ocwen's request did not strictly conform with the requirements of the Federal Rules of Civil Procedure. The court further [determined](#) that while Ocwen's "sole basis" for the motion was directed toward an anticipated challenge to the CFPB's constitutionality, there was "nothing unique" about bringing a "constitutional attack alongside other legal challenges potentially undergirding a motion to dismiss." Moreover, the court noted that if Ocwen's constitutional challenge later proved to be unsuccessful, it would "cause additional unnecessary delay in moving the case forward on its merits."

AG's views. Next, addressing Ocwen's April 2017 [Motion and Incorporated Memorandum to Invite the Views of the Attorney General of the United States](#), the court found that it was "premature" to invite the views of the AG in the proceedings because: (i) Ocwen had only "indicated an intent to launch a constitutional challenge" rather than an actual, presented challenge; and (ii) the AG presently does not have sufficient information about the "exact basis for the challenge" to make an informed decision about whether to intervene in the litigation. Consequently, the court issued an [order](#) holding Ocwen's motion in abeyance.

The case is No. 9:17-cv-80495-KAM.

Attorneys: Bridget Ann Berry (Greenberg Traurig, P.A.) for Ocwen Financial Corporation, Ocwen Mortgage Servicing, Inc., and Ocwen Loan Servicing, LLC.

Companies: Ocwen Financial Corporation; Ocwen Loan Servicing, LLC; Ocwen Mortgage Servicing, Inc.

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