

[Banking and Finance Law Daily Wrap Up, ENFORCEMENT ACTIONS— State AGs press court to modify Sprint consent order, \(May 25, 2017\)](#)

Banking and Finance Law Daily Wrap Up

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By [John M. Pachkowski, J.D.](#)

Following a court-mandated deadline, the Attorneys General for Connecticut, Indiana, Kansas, and Vermont have filed a memorandum in response to the U.S. Justice Department's position as to whether the states are entitled to modification of a 2015 Consent Order between the Consumer Financial Protection Bureau and Sprint Corporation.

The [2015 Consent Order](#) was intended to settle a lawsuit brought by the bureau against Sprint, in U.S. District Court for the Southern District of New York, alleging that Sprint knowingly allowed unauthorized third-party charges to be billed to its wireless telephone customers between 2004 and 2013 (see *Banking and Finance Law Daily*, [Dec. 17, 2014](#)).

The state AGs had [sought to intervene](#) in the case to ensure that the approximately \$14 million of Sprint's remaining, unused "consumer redress funds" are used for "consumer protection purposes" (see *Banking and Finance Law Daily*, [Jan. 6, 2017](#)).

In a subsequent [filing](#) the AGs argued that the Proposed Modified Order was "fair and reasonable, and its entry would serve the public interest."

CFPB/DOJ positions. Both the CFPB and the Justice Department filed memoranda opposing the modification. The bureau [stated](#) that under the consumer-redress plan, undistributed amounts are to be directed to the U.S. Treasury. Although the redress plan provides that the bureau may, in consultation with certain states and the Federal Communications Corporation, apply unused redress funds to other equitable relief reasonably related to the complaint's allegations, the bureau pointed out that it has not proposed doing so. The DOJ, in its filing, [contended](#) that the state AGs' motion is untimely. The state AGs knew at the time the Consent Order was submitted to the Court that any funds not used for redress or other equitable relief for consumers would be deposited in the U.S. Treasury as disgorgement. Also, the Consent Order "afforded the States no role with respect to distribution of the remaining Redress Amount fund" (see *Banking and Finance Law Daily*, [May 11, 2017](#)).

Equitable authority. The AGs' [latest filing](#) argued that the Court should exercise its equitable authority to modify the Consent Order. The AGs noted that, under Second Circuit precedent, they met all requirements of a three-prong test to determine the merits of motions to modify final judgments under Federal Rules of Civil Procedure 60(b).

The AGs also address the court's concerns regarding the Receipts Act, which provides that Government officials "receiving money for the Government from any source shall deposit that money with the Treasury." The AGs noted that the Act would therefore not apply to the proposed modification to the Consent Order since "The U.S. Department of Justice's Office of Legal Counsel . . . has determined that the government does not 'receive money' when it enters into settlements that provide for payments by a defendant to third-party programs if certain conditions—present here—are met."

Companies: Sprint Corporation

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