

## Litigation Alert

April 25, 2014

### ***Lawsky v. Condor Capital Corporation: Initial Enforcement of Dodd-Frank at the State Level***

#### **Background**

On Wednesday, April 23, 2014, relying on the Dodd-Frank Act, the New York State Department of Financial Services (“DFS”) filed a lawsuit in the U.S. District Court for the Southern District of New York against Condor Capital Corporation, a New York corporation that according to its website “provides financing solutions to consumers through automobile dealerships.”

According to the complaint, Condor “systematically hid[] from its customers the fact that they have refundable positive credit balances and then failed to refund those balances unless specifically requested.” In what will be a case of first impression, DFS alleges that this activity constitutes an “unfair, deceptive, or abusive act or practice” pursuant to Sections 1031 and 1036(a)(1) of Dodd-Frank. DFS seeks restitution for consumers and disgorgement of profits.

#### **Significance**

One of the most hotly debated issues during the passage of Dodd-Frank was whether to provide states with concurrent enforcement authority in federal consumer protection laws. The law, as passed, expressly authorizes states to bring claims in federal court. DFS is the first state regulator to bring an enforcement action in federal court. Last month, the Illinois Attorney General brought a similar lawsuit against a payday lender in Illinois state court. As these cases proceed, courts may not uniformly interpret broad terms like “abusive” and “covered person.”

For instance, whether Condor is a “covered person” under the statute may be a threshold issue. A “covered person” is “any person that engages in offering or providing a consumer financial product or service.” While “financial product or service” is broadly defined as “extending credit and servicing loans,” Condor may argue that it is not a “covered person” because individual car dealerships—not Condor—actually originated the loans and provided the financial products to consumers.

Under Dodd-Frank, “[t]he attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State in any district court of the United States *in that State* or in State court that is located in that State.” This provision will likely prevent the 29 other states in which Condor operates from joining the lawsuit in New York federal court, but nothing prevents other state regulators from suing Condor in their respective states. More broadly, the lawsuit filed Wednesday is likely the beginning of a wave of enforcement actions against financial service providers under Dodd-Frank at the state level.

## Contact Information

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