Managing repossessions and consumer bankruptcy in wake of Chicago v. Fulton

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Member **Rudy Cerone** (New Orleans) participated in a webinar through Auto Finance News, discussing the implications on repossessions in the bankruptcy context given the recent Supreme Court decision in *Chicago v. Fulton.* The February decision clarified that lenders who repossess a vehicle before the borrower files for bankruptcy are not required to turn over the repossessed vehicle as soon as a bankruptcy petition is filed. That decision, however, did not address other gaps that could open lenders to a new wave of litigation, especially as repossessions tick up as pandemic-related assistance ends.

> *Prior to that time, the lower courts, the Bankruptcy Courts, District Courts, and Courts of Appeal had split on whether or not the filing of the bankruptcy (and therefore the automatic stay) required vehicle finance lenders and creditors with a possessory lien, like the city of Chicago, to immediately turn over possession of the vehicle upon the filing of the bankruptcy. And the issue in the city of Chicago was under one of those specific subdivisions of the "automatic stay," and that is whether the mere retention of a repossessed vehicle after the customer files bankruptcy violated the "exercise control over property of the state" provision, or protection of the automatic stay. What the Supreme Court held … was that the "exercise control" provision of the automatic stay did not require a lender who repossesses a vehicle before the bankruptcy to immediately turn it over to the debtor upon the bankruptcy filing. As long as the lender did nothing other than just simply retain possession of the vehicle, that that was not a violation of the automatic stay.*

Click here to view the webinar.

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