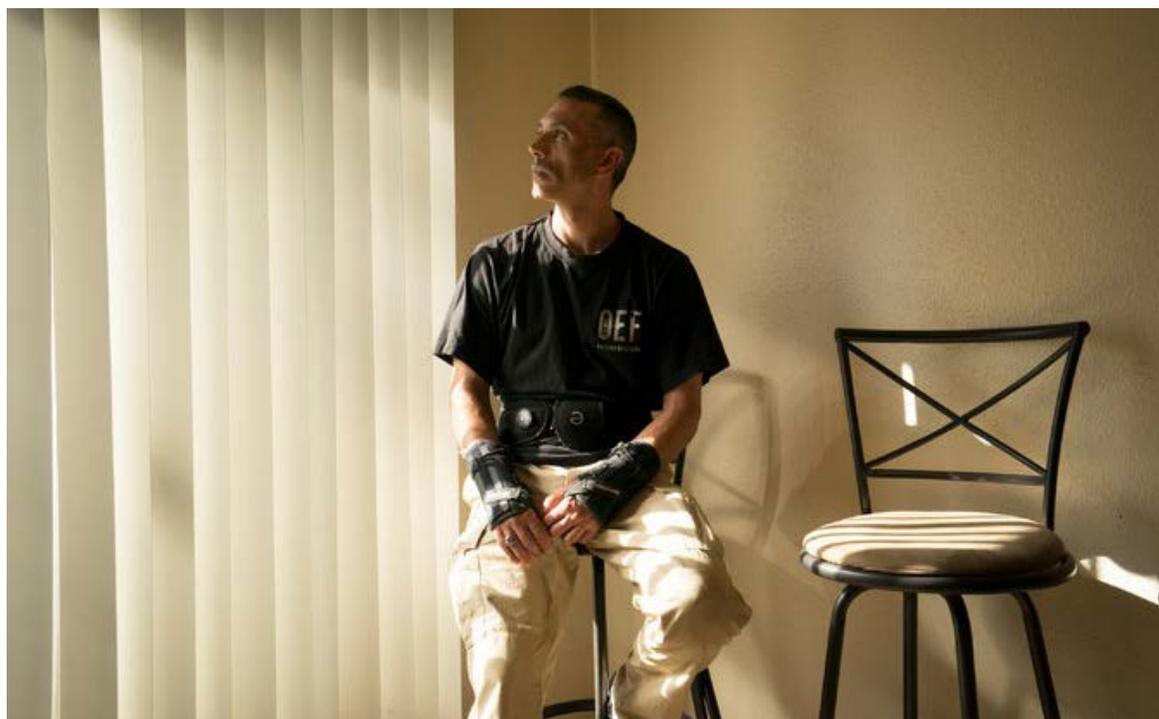


# *Failed by Law and Courts, Troops Come Home to Repossessions*

265 COMMENTS

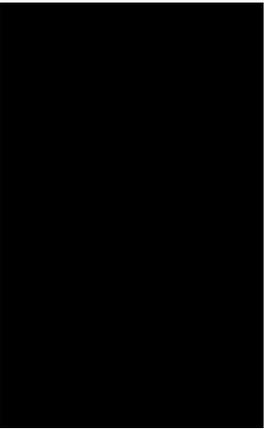
By JESSICA SILVER-GREENBERG and MICHAEL CORKERY MARCH 16, 2015



Charles Beard, a sergeant in the Army National Guard, was on duty in Tikrit, Iraq, when repossession men in California took his family car. Times

Matt Black for The New York

Charles Beard, a sergeant in the Army National Guard, says he was on duty in the Iraqi city of Tikrit when men came to his California home to repossess the family car. Unless his



wife handed over the keys, she would go to jail, they said.

The men took the car, even though federal law requires lenders to obtain court orders before seizing the vehicles of active duty service members.

Sergeant Beard had no redress in court: His lawsuit against the auto lender was thrown out because of a clause in his contract that forced any dispute into mandatory arbitration, a private system for resolving complaints where the courtroom rules of evidence do not apply. In the cloistered legal universe of [mandatory arbitration](#), the companies sometimes pick the arbiters, and the results, which cannot be appealed, are almost never made public.

That is the experience for many Americans who are contractually obligated to resolve their disputes with investment advisers or lenders in this way. But it is supposed to be different for the troops who are deployed abroad, say military lawyers, state authorities and Pentagon officials.

Over the years, Congress has given service members a number of protections — some dating to the Civil War — from repossessions and [foreclosures](#).

Efforts to maintain that special status for service members has run into resistance from the financial industry, including many of the same banks that promote the work they do for veterans. While using mandatory arbitration, some companies repeatedly violate the federal protections, leaving troops and their families vulnerable to predatory lending, the military lawyers and government officials say.

“Mandatory arbitration threatens to take these laws and basically tear them up,” said [Col. John S. Odom Jr.](#), a retired



Matthew Wolf, a captain in the

Army Reserve, sued Nissan over a disputed refund arising from a leased car he turned in when he was deployed to Afghanistan. But because of an arbitration clause in his lease, the lawsuit was dismissed, and his dispute was sent to arbitration.

Jessica Kourkounis for The New York Times

Air Force lawyer now in private practice in Shreveport, La. High-ranking Defense Department officials agree, telling Congress that “service members should maintain full legal recourse.”

Last year, a bipartisan bill that would have allowed service members to opt out of arbitration and file a lawsuit met with opposition from the [U.S. Chamber of Commerce](#) and Wall Street’s major trade group, the [Securities Industry and Financial Markets Association](#), or Sifma.

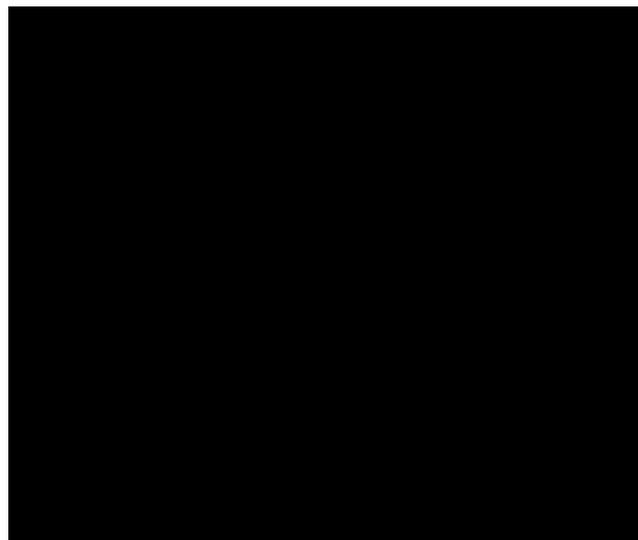
“While we remain very supportive of the troops, we see no empirical or other evidence that service members are being harmed by or require relief from arbitration clauses,” Kevin Carroll, a managing director and associate general counsel at Sifma, said in a statement.

The trade groups’ members include a roster of financial companies that have trumpeted their hiring of veterans and their initiatives for troops returning home from war. They include [JPMorgan Chase](#), the nation’s largest bank, and USAA, which caters almost exclusively to service members and their families.

Many banks contend — as do companies in other industries — that arbitration is a more efficient and less costly way to handle disputes. A spokesman for USAA said that the company supported the bill because it would have been “good public policy for the entire industry.” Still, USAA uses mandatory arbitration clauses in many of its financial service contracts with service members.

The clauses clamp down on frivolous litigation, including class-action lawsuits, and the cost savings allow companies to provide more affordable products to consumers, the trade organizations say.

In lobbying against the bill, several financial industry groups and a large phone company visited with the staff of Senator [Lindsey Graham](#), Republican of South Carolina, who sponsored the legislation along with Senator Jack Reed, a Rhode Island



Democrat.

The trade groups told Mr. Graham's office that they were already working to make their arbitration procedure more accommodating to service members, according to a person briefed on those discussions who would speak only on the condition of anonymity.

"The message was, 'Let us fix this internally,' " the person said. "Don't upset the apple cart with a new law."

The bill never made it out of committee last year, though Mr. Graham plans to reintroduce it this year.

Consumer lawyers say it is easy to understand why the industry is lobbying against an exemption for service members: One carve-out from mandatory arbitration could bolster broader calls to excise the clauses from contracts altogether.

"If you admit that these are bad for the military, then it follows that they are bad for consumers much more broadly," said [Deepak Gupta](#), a lawyer in Washington who has represented consumers in cases about arbitration before the Supreme Court.

The main law challenged by mandatory arbitration clauses is the Servicemembers Civil Relief Act, or S.C.R.A., military officials say. Under the law, active duty military members and their families are protected from repossession and foreclosure without a court order. It allows them to terminate any real estate or auto lease when their military orders require them to do so. And it requires lenders to reduce the interest rates on any loans to 6 percent.



Thomas Booth Jr., a lawyer

Violations of those protections are widespread, according to a review by The New York Times of court records and loan contracts.

The [Government Accountability Office](#), for example, found in 2012 that financial institutions had failed to abide by the law more than 15,000 times. Last month, Santander Consumer USA [reached a \\$9.35 million](#) civil settlement with the Justice Department over accusations that the lender illegally seized cars from members of the military for a period of nearly five years until 2013.

Arbitration is often stacked against service members from the start. Some of the contracts, for example, offer two possible

representing Matthew Wolf in his dispute with Nissan.

Jessica Kourkounis for The New York Times

sites for a hearing: one city on the West Coast and another on the East Coast. Consumer lawyers say the companies invariably pick the city that is farther away from where the customer lives.

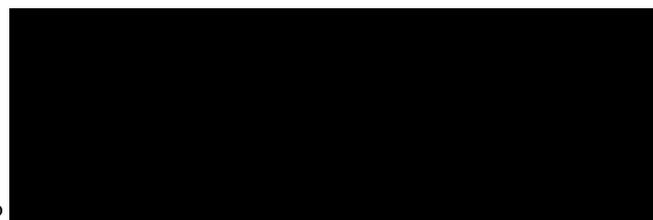
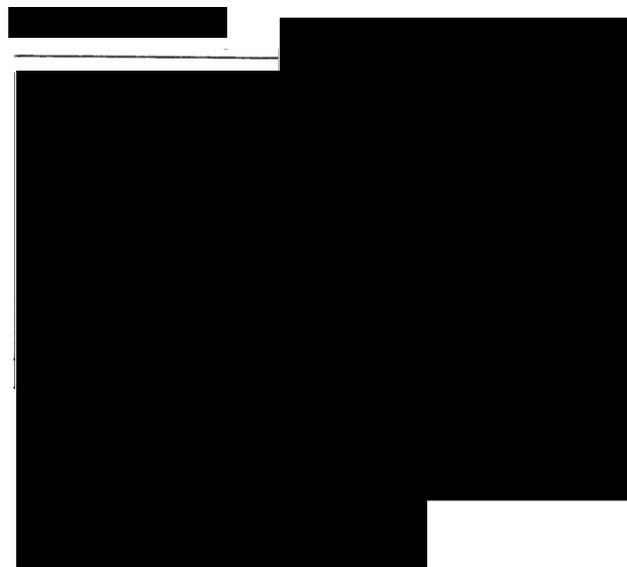
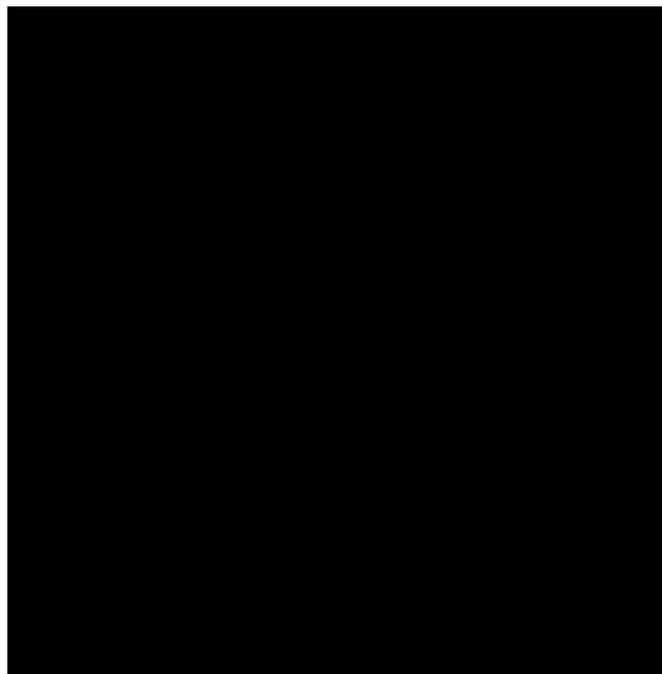
But the real power of the clauses, the lawyers say, is that they make it virtually impossible for consumers to band together in a broad legal challenge.

Instead, companies can battle claims one by one. And alone, few consumers can afford to take on companies at all, especially if their disputes revolve around a few hundred dollars. Debt collectors promoted such benefits in an industry newsletter, describing mandatory arbitration as a “silver bullet” that could “successfully remove the matter from court and likely end the case in its entirety.”

When Matthew Wolf, a captain in the Army Reserve, was deployed to Afghanistan a year into a 39-month car lease, he turned in the car, an Infiniti, to the dealership and asked for a refund of \$400 he had put down toward future monthly payments — his right under the S.C.R.A.

Nissan, which is the parent company of Infiniti, balked at Captain Wolf’s request, refusing to give him back the money. Captain Wolf and his lawyer, Thomas Booth Jr., sued Nissan on behalf of service members facing similar predicaments. But because of an arbitration clause in his lease, the lawsuit was dismissed and his dispute was sent to arbitration.

In arbitration, he was told that the fees for the case could total \$8,200 —



or nearly 21 times what he said he was owed.

In a statement, a spokesman for Nissan's Infiniti unit said, "We continue to work with Mr. Wolf to resolve his complaint."

Despite arguments that arbitration is more efficient and less expensive than court, military lawyers say cases can drag on for years.

It took more than four years after Sergeant Beard's car was repossessed before an arbiter ruled on his case against Santander Consumer. Although Sergeant Beard was awarded \$6,500, the arbiter denied his requests that Santander compensate him and his family for the wrongful repossession.

For Sergeant Beard, the real issue is all the other troops who have been victimized.

"I tried to fight for everybody, but it only ended up with me," said Sergeant Beard, who adds that such repossessions "will destroy soldiers in combat by putting them in a position where they can't help their loved ones."

In a statement, a spokeswoman for Santander Consumer said that since 2012, "the lender has used systemic controls to prevent improper repossessions of vehicles," including the vehicles of military members protected under the S.C.R.A.

In the action against Santander late last month, Justice Department officials emphasized that the auto lender used an arbitration clause to undercut a class action brought by a military member whose car was seized.

That soldier, according to people briefed on the matter, was Sergeant Beard.

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A version of this article appears in print on March 17, 2015, on page A1 of the New York edition with the headline: Failed by Law and Courts, Troops Come Home to Repossessions.  
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