

## Virginia Attorney General obtains default judgment in lawsuit against pension advance company

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Virginia's Attorney General [has announced](#) that "he has secured more than \$50 million in debt relief and ordered civil penalties" as a result of his lawsuit filed in state court in March 2018 against Future Income Payments, LLC; FIP, LLC; and their individual owner for allegedly making loans to Virginia consumers, many of whom were military veterans, that were falsely marketed as asset purchases. As discussed below, the court's order is a default judgment in favor of the Virginia AG.

Although [the AG's complaint](#) alleged that the interest rates charged on the transactions exceeded Virginia's usury limits, it did not charge the defendants with violating the state's usury laws. Instead, the complaint charged the companies' with violating the Virginia Consumer Protection Act (VCPA) based on their alleged misrepresentations to consumers and sought to hold the individual defendant personally liable for the companies' VCPA violations based on his active participation in their business activities. (The complaint alleged that the affected consumers could have brought private actions under Virginia's usury laws but that the defendants avoided such potential actions by misrepresenting its transactions as "sales.")

In September 2018, the CFPB [filed a lawsuit](#) against the defendants in a California federal district court in which it alleged that defendants made loans disguised as asset purchases that violated state usury and licensing laws. More specifically, the CFPB alleged that the defendants had committed deceptive acts in violation of the Consumer Financial Protection Act and failed to make disclosures required by the Truth in Lending Act. The CFPB also alleged that numerous state and local regulators and agencies, including the Virginia AG, had concluded that the defendants' transactions were loans for purposes of applicable state laws. The defendants have not yet filed an answer to the CFPB's complaint or otherwise responded.

While the CFPB's complaint provided no explanation for why the defendants' transactions are in fact extensions of credit, the Virginia AG's complaint alleged that although the defendants' agreements had some variations, they have "always been virtually guaranteed repayment by Virginia pensioners, or [the defendants] built-in potential events that would discharge the pensioners' obligations to repay, knowing those events were unlikely to occur."

The Virginia court's docket indicates that the defendants' counsel withdrew from the case on May 30, 2018 following their filing of a motion to dismiss. Based on a July 23, 2018 [Wall Street Journal article](#) that referred to the individual defendant as a "felon," the defendant companies have been shut down and investors in the companies are expected to bring lawsuits against the individual defendant. On September 11, 2018, the court denied the motion to dismiss and ordered the defendants to answer the complaint.

On November 14, the court entered a [Permanent Injunction and Final Judgment](#) that provided the defendants were in default due to their failure to answer the complaint. The Permanent Injunction and Final Judgment includes a finding that the defendants' transactions were loans disguised as sales and a declaration that the transactions were usurious to the extent they were made at rates exceeding 12% per annum. However, the Virginia AG's recharacterization of the transactions as loans was not litigated because the factual allegations against the defendants are deemed admitted for purposes of a default judgment.

The Permanent Injunction and Final Judgment also awards the following relief to the Virginia AG:

- A civil penalty of \$31,740,000
- A permanent injunction barring the defendants from collecting usurious interest in the amount of \$20,098,159.63
- Restitution to consumers for losses in the amount of \$414,473.72
- Costs and attorneys' fees in the amount of \$198,000
- A permanent injunction barring the defendants from violating the VCPA

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