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NEWS

 **Where's My Car? Litigation Surges as Auto-Finance Companies Sue Over Towing**

 Impound suits by finance companies appear to be concentrated in the Northeast, but the phenomenon has reached as far as San Antonio, Texas.

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 Financial Services and Banking



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What You Need to Know

- Local governments are seeing a surge in suits claiming their impounding of vehicles violates the civil rights of banks holding liens.
- Cities and towns that turn ownership of impounded vehicles over to towing companies are accused in the suits of failing to give proper notice to vehicle lenders.
- Yonkers, New York, has brought an appeal of rulings favoring auto lenders to the U.S. Court of Appeals for the Second Circuit.

A growing number of suits is developing around claims by vehicle finance companies that their due process rights are violated when local governments impound motor vehicles.

Long-established case law gives lienholders due-process rights when governments seize cars, but many local governments are facing suits over impound procedures that allegedly violate those rights.

Towing policies commonly enacted by local governments with an eye toward saving taxpayer dollars, which transfer ownership of the vehicle to the towing company when the owner doesn't pay to recover his car, are unconstitutional, according to attorneys for lenders.

Federal courts in New Jersey, the Southern District of New York and the Eastern District of New York each have at least a half-dozen pending suits in which vehicle finance companies claim they were not given notice when their vehicles were seized.

Impound suits by finance companies appear to be concentrated in the Northeast, but the phenomenon has reached as far as San Antonio, Texas, where Santander Bank has a suit pending against the city and a towing company.

Suits Across Nation

A New Jersey attorney, Nicholas Duston of Norris McLaughlin in Bridgewater, has brought many of the suits on behalf of auto lenders.

Duston's latest suit was filed Wednesday against Fairfield Township.

In the Fairfield suit, Santander Consumer USA says it holds a lien on a 2015 Chevrolet Silverado that was towed and stored on orders of the township police in December 2021. The vehicle's owners, who entered into a loan agreement with Santander, defaulted on the payments, the suit said. In June 2022, Santander learned from the vehicle's owners that it was impounded by Fairfield. When Santander tried to recover the Silverado from the town's towing contractor, the bank was presented with a bill for \$11,283, representing towing and storage charges. Santander's suit says Fairfield violated its civil rights and seeks possession of the vehicle.

Fairfield has not entered an appearance, and its officials did not respond to a request for comment.

Bergen County faces a similar suit from Daimler Trust, which holds the lien on a leased Mercedes-Benz vehicle whose owner stopped making payments before it was towed away at the direction of the Bergen County Police. When Daimler sought to reclaim the vehicle, it was told to pay \$10,748 in fees, but it refused and filed a suit on Dec. 13, 2022. A Bergen County spokesperson, Derek Sands, declined to comment on the case.

Other New Jersey suits are pending against the municipalities of North Plainfield and Butler and the Port Authority of New York and New Jersey.

The Port Authority also faces three towing suits from auto finance companies in the Eastern District of New York, and New York faces three of the suits in the Southern District of New York. The city's legal department did not respond to requests for comment about the auto finance litigation. A spokesman for the Port Authority, Thomas Pietrykoski, declined to comment.

Courts have entered summary judgment in a similar suit by Santander against Nassau County, New York, in the Eastern District of New York, in August 2022; in a suit by American Honda Finance Corp. against Aston, Pennsylvania, in the Eastern District of Pennsylvania, in June 2021; and in another suit by American Honda Finance against Revere, Massachusetts, in the District of Massachusetts, in July 2020.

Also a target of suits by auto finance companies is Yonkers, which has three suits pending in the Southern District of New York.

Yonkers has also taken three other suits to the U.S. Court of Appeals for the Second Circuit after Santander was granted summary judgment on its civil rights claims. One of the cases on appeal concerns a Yonkers resident whose 2017 Nissan Pathfinder was towed away by Yonkers police for an expired registration and outstanding parking violations.

At the time it was towed, the owner was in default on her monthly payments to Santander. Santander was awarded \$3,000 on its claims against Yonkers and, because it was the prevailing party on a civil rights claim, was awarded \$96,077 in legal fees and \$773 in costs. Yonkers also was required in the judgment to revise its city code “to provide for prompt notice of towing or removal as well as an opportunity to be heard before a person or party independent of [Yonkers] to any registered owner, title owner, lessor or lien holder of any motor vehicle being towed or removed for non-payment of parking tickets or other violations of law or code.”

Duston of Norris McLaughlin represents Santander in the Yonkers appeal. He declined to comment for this article. Darius Chafizadeh, of Harris Beach in White Plains, New York, representing Yonkers, declined to comment on the appeal.

In an article he wrote for Reuters about towing suits by auto finance companies, Duston noted a ruling concerning due process and vehicle towing from the U.S. Court of Appeals for the Ninth Circuit from 2008, *Clement v. City of Glendale*. There, the court said that “the government may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking.”

Dunston wrote that “decades after the cases establishing due process rights for impounded vehicles, many municipalities (and even some states) continue to get the issue fundamentally wrong. Across the country, statutes and ordinances remain on the books that do not provide for any notice of impound, or provide notice to only some of the people to whom notice is required, or provide notice only that the municipality has a list of demands, as opposed to providing notice of a procedure for recovering a vehicle.”

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