

**Testimony of Tennessee Attorney General Robert E. Cooper, Jr.**  
**The United States Senate Committee on Commerce, Science, and Transportation**  
**“Soldiers as Consumers: Predatory and Unfair Business Practices Harming the Military Community”**  
**November 20, 2013**

Good afternoon Chairman Rockefeller, Ranking Member John Thune and members of the Committee. It is an honor to be included on this distinguished panel and to testify before you today. I congratulate the Committee for its leadership on this important issue. I want to use my limited time to discuss a judgment obtained by the office of the Tennessee Attorney General against companies that were targeting soldiers at the Ft. Campbell army base with numerous unlawful practices. I will conclude with some lessons learned from this six-year legal battle.

The lawsuit began in 2005 when the Tennessee Attorney General’s office obtained a Temporary Restraining Order (TRO), an asset freeze, and other relief against Britlee, Inc., a seller of computers and other electronics, and Rome Finance Company, which financed these sales.

Our lawsuit alleged that Rome Finance and Britlee both engaged in numerous unlawful practices including:

- operating without appropriate licenses in Tennessee;
- price-gouging soldiers;

- falsely representing their products were new when in fact many were returns, liquidation purchases, and defective equipment;
- claiming their prices on computers and electronics were a great deal, but marking up their products as high as 300% of MSRP;
- falsely claiming they were offering 0% financing, but really charging 19.2 % APR;
- concealing additional costs and contract terms; and
- engaging in abusive collection practices, including contacting superior officers.

Rome Finance adopted an aggressive litigation strategy and engaged in misconduct during discovery. However, the most egregious example of abusive conduct by Rome was that it continued for seven months, despite notice from our office, to attempt collection on the account of a deceased soldier whose body was found on the streets of Baghdad after being tortured and beheaded. State Circuit Court Judge R. Ross Hicks observed in his decision, “While the thought of what these soldier’s families had to endure when these soldiers were killed in action is unbearable, the thought that their families and loved ones had to endure months and months of unnecessary collection billings from Rome is beyond comprehension.”<sup>1</sup>

On August 11, 2008, the court granted the ultimate sanction for Rome Finances’s litigation misconduct – a default judgment. At a hearing that day, the State presented its case against Rome and submitted proof of the amount of restitution to which the soldiers were entitled. The court ordered the companies to stop all collections against soldiers, dismissed all

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<sup>1</sup> *State of Tennessee ex rel. Robert E. Cooper, Jr., Attorney General v. Britlee, Inc., et al.*, Case No. 50500795, slip op. at 43 (Montgomery County Cir. Ct, Dec. 18, 2008 Findings of Fact and Conclusions of Law).

collections lawsuits, and ordered Rome to clear up all affected credit bureau records for the soldiers. Remaining debts were ordered cancelled, and the soldiers were allowed to keep their computers.

Rome Finance then filed Chapter 11 bankruptcy in California in a failed attempt to enjoin the state court proceeding. Because of Rome's misconduct that had been documented in our case, a trustee was appointed in the bankruptcy proceeding with the support of the U.S. Department of Justice. Those bankruptcy proceedings are still under way, but my office was able to negotiate and obtain approval from the bankruptcy trustee for the disbursement of \$2.2 million from Rome's assets, which has been used to provide restitution to almost 4,000 soldiers who had bought merchandise from these companies.

Unbeknownst to the State, after we obtained the TRO, Rome Finance and Britlee created a host of new entities to do additional business in other states, and Rome began transferring receivables to its new entities. We were subsequently contacted by the New York Attorney General's Watertown office in connection with its investigation of the new Rome and Britlee entities that were operating near a military base in New York.

This is the first lesson learned from the Rome/Britlee case. Many unscrupulous businesses that prey on our military and their families no longer fit the profile of the local business on "the strip" outside the main gate. In this case, Britlee set up kiosks in the local mall alongside reputable merchants. More important, the retailer and its strategic partners in finance were sophisticated, nationwide operations with tens of millions of dollars in cash flow.

They had the financial resources and expertise not only to hide assets but to close and re-open where opportunity called.

Shifting operations around the country is easier when a company doesn't worry about obtaining proper licenses and lies about its licensing status when caught. For example, Rome Finance falsely claimed it was a duly licensed consumer lender in California. This practice puts an even greater burden on regulators, who have administrative procedures to deal with licensed entities but have to seek a court order to close down those operating outside the regulatory framework.

The defendants in our case engaged in an aggressive litigation strategy, including filing bankruptcy in California, to avoid paying the Tennessee court's substantial judgment. This tactic required our lawyers to make several trips to California. Fortunately, my office had the resources and staff time available for this case. Litigation against companies experienced in preying on the military is difficult and time-consuming. It can be a challenge for state Attorneys General who, although they may win a judgment in state court, have limited resources available to chase defendants around the country.

Defendants in this and other cases who prey on our men and women in uniform will go to great lengths to stay in business because it is very lucrative. Discovery in our case revealed that the defendants were funded by a network of sophisticated investors attracted by high rates of return. Unfortunately, many young soldiers are less sophisticated about finance and are especially vulnerable. A large number of soldiers who purchased computers from Britlee were about to be deployed to Iraq and were desperate to have some means to communicate

back home. Unscrupulous retailers and lenders know that soldiers will hesitate to report them to regulators and are afraid consumer disputes will be viewed negatively by their commanders and will harm their advancement.

Another problem encountered by soldiers in the Rome/Britlee case involved the use of allotments. An allotment is an automatic deduction made from a soldier's military-pay account which is sent to a third party. Allotments can be discretionary (where the soldier instructs the military where to send some or all of his money) and non-discretionary (where the soldier's pay is allotted to someone else by mandate, such as court-ordered child support). This system of allotments through a third-party bank is commonly used by military predatory lenders because allotments made to "entities" must be made by electronic transfer or direct deposit and are difficult to stop once they have started.

In this case, Britlee required soldiers making a purchase at its mall kiosk to go online on the spot, access their military pay accounts (known My Pay accounts), and set up bank accounts at First Citizens Bank in Kentucky. The bank was designated to receive regular allotment payments from the soldiers' military pay, which the bank would then send to Rome Finance every month on behalf of the soldiers. Predictably, these payments were very difficult to stop even after the court enjoined further collections.

Perhaps the most important lesson learned from the Rome/Britlee lawsuit is the importance of financial education and communication with young soldiers and their families. The Attorney General's office became involved in this case at the request of the Consumer Affairs Counselors at Ft. Campbell after a number of soldiers complained to them about Rome/Britlee. During the litigation, our office communicated regularly with Ft. Campbell, from

the Commander down the chain of command to the civilian consumer protection team. We meet regularly with Ft. Campbell's Consumer Affairs Counselors and are currently working with them to develop training materials on consumer protection issues tailored specifically to military bases.

There is no substitute for a close working relationship and communication between civilian and military authorities to protect our military from predatory and unfair practices. That is one reason it is so important to have Holly Petraeus leading the effort at the Consumer Financial Protection Bureau to protect service members. Ms. Petraeus and I have visited Ft. Campbell and military facilities in Memphis together. She spoke earlier this year at a bipartisan conference my office hosted for the southern region of the National Association of Attorneys General on consumer and other legal issues facing the many military bases in the South. I can personally attest to her unique ability to facilitate communication between the military and civilian consumer protection authorities.

A 2009 investigation by this Committee highlighted unique challenges the internet presents in the area of consumer protection. Young soldiers and their families, often living in places far away from friends and family, are prime targets for every kind of digital fraud, unfair business practice, and predatory lending. In the Rome/Britlee litigation, we had the advantage that our defendants could be sued and had assets within the United States. Unfortunately, bad actors using the internet, especially those on servers from non-U.S. jurisdictions, can be impossible to stop. Even if you obtain a judgment, it is virtually impossible to enforce.

These difficulties in enforcement highlight the need for broader financial literacy education, so that consumers, both civilians and military, do not fall prey to these frauds. Tennessee is one of the few states that mandate financial literacy training for high school students. In fact, a member of my staff helps to lead the program that educates teachers around our state on this subject. More and more private sector employers are realizing that financial literacy is essential to a stable and efficient workforce. And financial literacy is just as important to maintaining military force readiness and morale, so that our servicemen and women can focus on their mission without the distraction of unnecessary financial issues. Ft. Campbell is doing a good job in this area, but we cannot expect the military to assume the entire burden. We need a strong partnership among the military, federal agencies, state consumer offices, and state attorneys general to protect our men and women in uniform from consumer fraud.