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Fourth Circuit Finds FACTA Class Should Have Been Certified

***Stillmock v. Weis Mkts., Inc.*, 2010 U.S. App. LEXIS 13508 (4th Cir. Md. July 1, 2010)**

Facts: Appellants, a class of consumers, claimed that Weis Markets violated [§ 1681c\(g\)](#) of the Fair Credit Reporting Act (“[FCRA](#)”) by failing to properly truncate the credit card numbers and expiration dates on receipts. The Appellants filed a motion for class action certification with the district court. The class was to include Appellants and all other customers of retail stores owned and operated by Weis Markets, who received credit and debit card receipts printed in violation of the FCRA’s truncation requirements. The class expressly excluded customers who had suffered actual damages due to identity theft or had ever been executives of Weis Markets. The district court denied certification on two grounds: 1) that determining the quantum of damages with respect to each class member would be too individualized for class-wide treatment under [Federal Rule of Civil Procedure Rule 23\(b\)\(3\)](#); and 2) that a class action as requested by plaintiffs would not be superior to other methods of adjudicating the claims alleged in the lawsuit. The Fourth Circuit found that the grounds upon which the district court relied to deny class action certification were untenable and, therefore, had abused its discretion.

- **Class Certification.** Rule 23(b)(3) requires that questions of law or fact common to members of the class predominate over questions affecting only individual members, and that a class action is superior to other methods of adjudicating the class claims. The district court erroneously denied certification claiming that the purported class did not meet either of the two requirements.

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- **Commonality-Predominance.** While the Court agreed with the district court's implicit holding that damages under [§ 1681n\(a\)\(1\)\(A\)](#) are to be awarded on a per consumer basis, the Court also agreed with Appellants that the individual issues of damages would predominate over issues common to the class. The Court held that common questions of law and fact predominate over the individual issues presented by Rule 23(b)(3)'s commonality predominance test. Here, the putative class members were exposed to the identical risk of identity theft in the same manner by the repeated identical conduct of the same Defendant, and none suffered damages from identity theft. Therefore, the Court stated that it "strains credulity to conclude that the individual damages issues presented by the purported class which Plaintiffs seek to certify would be anything other than simple and straightforward."
- **Superiority.** The Court disagreed with the district court's use of the test-case method to determine that class action was not superior to other available methods. Under the test-case method, if Plaintiffs win their individual claims against Defendant in a non-class action, other similarly situated Weis Market customers would have the opportunity to file their own individual actions and assert offensive collateral estoppel on the issues of liability and willfulness. The Court found that the district court failed to explain why it believed the class action method was inferior to the test-case method. Additionally, the Court found several factors in favor of class action including: 1) there is no indication that class members would have a strong interest in individual litigation; and 2) class certification promotes consistency of results, giving Weis Markets the benefit of finality and repose.
- **Superiority.** Weis Market also argued that the availability of attorney's fees and punitive damages under the FCRA makes individual lawsuits feasible. The Court found that Weis Market's arguments were without merit. The Court determined that the low amount of statutory damages available means no large potential punitive damages awards on the horizon, making individual actions unattractive to plaintiffs. Additionally, the Court found no basis to conclude that the possibility of recovering attorney's fees in addition to statutory damages would result in individual actions of a scale comparable to the potential enforcement by class action.

Third Circuit Refuses to Let Verizon Back Out of Class Action Settlement

***Ehrheart v. Verizon Wireless*, 2010 U.S. App. LEXIS 12174 (3d Cir. Pa. June 15, 2010)**

Facts: Appellants, a class of consumers, claimed that Verizon violated [§ 1681c\(g\)](#) of the [FCRA](#) by failing to properly truncate the credit card numbers and expiration dates on receipts. The Parties then participated in court-ordered mediation, starting in January of 2008. During this time, legislation was pending before Congress -- the Credit and Debit Card Receipt Clarification Act of 2007 ("Clarification Act"), [§ 1681n\(d\)](#) -- which would amend the FCRA, effectively eliminating the Appellants' cause of action. On April 22, 2008, after completing mediation, the parties arrived at settlement which they submitted to the district court for approval pursuant to [Federal Rule of Civil Procedure 23\(e\)](#). The district court entered a preliminary order approving the settlement two days later. The Clarification Act was signed into law on June 3, 2008. Six days later Verizon filed a motion asking the district court to vacate its order granting preliminary

approval of the settlement. The district court granted Verizon's motion. On appeal, the Third Circuit reversed the district court's order.

- **Class Action Settlement.** Under Rule 23(e) a district court's primary role is to determine whether settlement is fundamentally fair, reasonable and adequate. The purpose of Rule 23(e) is to protect the unnamed members of a class from unjust or unfair settlements.
- **Class Action Settlement.** There are two steps in reaching settlement in a class action. First, the parties reach an agreed-to settlement. Second, the district court evaluates the agreement as a fiduciary for absent class members. This fiduciary duty does not extend to defendants in a class action, who are in a position to protect their own interests during negotiation. The Third Circuit found that the parties entered into an enforceable settlement agreement and that the district court erred in vacating its preliminary approval of that agreement. Such action would render the settlement process meaningless since either party to a class action settlement could back out of an agreement anytime before court approval and avoid any legal repercussions for breaching the earlier offer and acceptance. In negotiating the settlement, Verizon bet on the certainty of settlement instead of gambling on the uncertainties of future legislative action. Verizon lost and the district court erred by letting it replay its hand.
- **Class Action Settlement.** There is a strong presumption in favor of voluntary settlement agreements. This presumption is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation. By vacating its preliminary approval of settlement, the Third Circuit found that the district court permitted Verizon to void its settlement agreement when it became unpalatable and digressed from the federal policy of encouraging class action settlement agreements.
- **Class Action Settlement.** The Clarification Act eliminated the Appellants' cause of action and retroactively encompassed Appellants' claims. However, the Clarification Act does not moot the settlement agreement the parties executed while that legislation was pending before Congress. Changes in the law after settlement do not affect the validity of the agreement and do not provide a legitimate basis for rescinding settlement. Specifically, the Court found that Verizon could avoid its independent contractual obligations simply because a change in the law confers upon it a benefit that could have altered the settlement calculus.

Nevada Court Finds Accelerator Clause in Auto Loan Agreement Allowed Furnisher to Demand Full Payment and Report Adverse Information to the CRAs

***Woodson v. Capital One Auto Finance, Inc.*, 2010 U.S. Dist. LEXIS 66218 (D. Nev. July 1, 2010)**

Facts: Plaintiff brought suit against Defendant Capital One Auto Loans ("Capital One") for allegedly reporting false and inaccurate information to the CRAs and failing to investigate a disputed claim brought to the CRAs regarding an adverse Capital One account. Plaintiff's automobile, financed through Capital One, was stolen and the amount owed on the vehicle was

greater than the insurance proceeds. After months of unsuccessful attempts to obtain the remaining amount owed by Plaintiff, Capital One began reporting to the CRAs that Plaintiff was late on her payments and that Defendant had charged off the loan as bad debt. Plaintiff alleged violations of [§ 1681n](#) and [§ 1681o](#) under the FCRA. Capital One's Motion for Summary Judgment was subsequently granted.

- **Willful Violation.** Section 1681n imposes civil liability under the FCRA upon any person who "willfully fails to comply" with any requirement of the FCRA. The Ninth Circuit has held that "a company is liable for a willful violation of FCRA if it 'knowingly and intentionally committed an act in conscious disregard for the rights of others.'"
- **Negligent Violation.** Section 1681o imposes civil liability upon any person "who is negligent in failing to comply" with any requirement of the FCRA, but damages are limited to any actual damages as well as costs and fees.
- **Underlying Agreement.** An accelerator clause between Plaintiff and Capital One allowed Capital One to demand immediate payment of the loan balance if Plaintiff breached any obligation in the auto loan agreement. Plaintiff breached that agreement when she could no longer provide a security interest in the vehicle due to it being stolen.
- **Furnisher Duties.** Because Plaintiff did not pay on the remainder of the loan, Capital One did not act in conscious disregard for the rights of Plaintiff when it reported Plaintiff's activities to creditors. Likewise, because Plaintiff failed to pay the balance on her loan, Capital One did not willfully or negligently fail to comply with the requirements of [§ 1681s-2\(b\)](#) when it reported Plaintiff's activities to CRAs.

Plaintiffs' Common Law Claims Survive Preemption Challenge Due to Allegations of Falsity and Malice

Home Care Servs., Inc., et al. v. Advanta Bank Corp., 2010 U.S. Dist. LEXIS 59227 (D. Ariz. June 15, 2010)

Facts: An employee of Home Care Services, Inc. d/b/a LJM Air Conditioning ("LJM") obtained a credit card from Advanta Bank Corporation ("Advanta") on behalf of LJM without LJM's authorization or knowledge. The employee then made numerous fraudulent charges and falsified LJM company records to conceal the activity. Once discovered, an Advanta fraud investigator reported the fraud and indicated that Advanta would write off the credit card balance that remained on the card. Instead, Advanta's legal department informed LJM that its President and CEO were liable for the amount of the unpaid balance. Advanta then began reporting the information to CRAs. LJM eventually filed suit against Advanta alleging violations of the [FCRA](#) and various common law claims. Advanta filed a motion for partial dismissal of some of Plaintiffs' claims. The court denied the motion.

- **Preemption.** Defendant moved to dismiss Plaintiffs' common law claims for intentional infliction of emotional distress and defamation because [§ 1681t\(b\)\(1\)\(F\)](#) preempts state common law claims. The court rejected Plaintiffs' statutory approach and concluded that [§ 1681t\(b\)\(1\)\(F\)](#) generally preempts both statutory and common law causes of action.

- **Preemption.** Although the court found that § 1681t(b)(1)(F) applies to both statutory and common law claims generally, [§ 1681h\(e\)](#) states that certain tort claims are barred except as to false information furnished with malice or willful intent to injure such consumer. Thus, § 1681h(e) provides somewhat of an exception from preemption if a Plaintiff can prove falsity and malice.
- **Preemption.** Additionally, Congress evinced no intent to repeal § 1681h(e), as Congress added § 1681t(b) at the same time that it amended § 1681h(e) to clarify the types of state common law causes of action preempted by the FCRA. Therefore, under § 1681h(e), Plaintiffs may plead claims for defamation and intentional infliction of emotional distress based on the reporting of information because they have alleged falsity and malice. Whether discovery ultimately reveals facts indicating falsity and malice is a question for summary judgment.

Plaintiffs' State Law Claim Prohibiting False Credit Information Reporting is Preempted by the FCRA

Parent v. Citibank (South Dakota) N.A., 2010 U.S. Dist. LEXIS 58371 (E.D. Wis. June 11, 2010)

Facts: Plaintiffs alleged that Defendants either disclosed or threatened to disclose information adversely affecting their reputation for credit worthiness knowing that the information was false in violation of Wisconsin's Consumer Act. Defendants filed a motion to dismiss this claim based on [§ 1681t\(b\)\(1\)\(F\)](#) of the [FCRA](#). The Court agreed that such claim was preempted by the FCRA and granted Defendants' motion.

- **Preemption.** The plain language of § 1681t(b)(1)(F) clearly eliminates all state causes of action against furnishers of information, not just ones that stem from statutes that relate specifically to credit reporting. Under the statute, no requirement or prohibition under state law can be imposed regarding the subject matter regulated under [§ 1681s-2](#) which relates to the responsibilities of persons who furnish information to consumer reporting agencies.
- **Preemption.** Plaintiffs' state law claim is founded on the allegation that the Defendants have disclosed or threatened to disclose the Plaintiffs' alleged debt to adversely affect their reputation and creditworthiness. This is tantamount to the prohibition set forth in § 1681s-2 and no matter how the Plaintiffs may style the claim, it is an allegation that the Defendants reported false information about Plaintiffs' credit and is therefore preempted by the FCRA.

Plaintiff's FCRA Claim Against Public Record Company Dismissed Because it Did Not Maintain a Consumer File For Plaintiff

Fiscella v. Intelius, Inc., 2010 U.S. Dist. LEXIS 57918 (E.D. Va., June 10, 2010)

Facts: Plaintiff alleged a violation of [§ 1681i](#) of the [FCRA](#) against Intelius, Inc., a company that runs a website where consumers can obtain public record information. In April 2009, Plaintiff visited Intelius' website, ran a search using the terms "Edward Fiscella," and purchased a report called the "people search report." The report listed various public records relating to different

individuals named “Edward” or “Ed” “Fiscella” who are or were located in Virginia, including people of different ages and races than Plaintiff. The report was not solely about Plaintiff, but rather provided a list of all individuals that matched the search terms he entered. The report outlined this fact at several points. The report included a number of traffic infraction records for several different individuals named Edward Fiscella. It is apparent that the records pertain to different individuals because the individuals had different birth dates and races. Specifically, the report included a record for an Edward Fiscella with a different birth date and race from Plaintiff, who had been convicted of driving while intoxicated. Plaintiff wrote to Intelius requesting that such record be corrected because he had never been convicted of a DWI. Intelius responded to Plaintiff’s letter by reminding him that that the report yielded results for anyone in the specified state with the same search criteria, and that if the specific criminal record does not match up with his information, than it does not pertain to him. Intelius filed a Rule [12\(6\)\(b\)](#) motion to dismiss, which the Court granted.

- **Reinvestigation.** To maintain a cause of action under [§ 1681i\(a\)\(1\)\(A\)](#), a plaintiff must allege, at a minimum, that he brought inaccurate or incomplete information in his file to the attention of a CRA which then failed to reasonably reinvestigate the disputed information by recording the current status of the information or deleting it from the file within 30 days of receiving notice of the dispute.
- **“File” Defined.** A CRA’s duty to reinvestigate is triggered when information contained in a consumer’s file at a CRA is disputed by the consumer and the consumer notifies the agency directly. A “file” is defined under [§ 1681a\(g\)](#) as “all of the information on that consumer recorded and retained by a [CRA] regardless of how the information is stored.” Here, Plaintiff had not, and cannot on these facts, claim that Intelius created a “file” on Plaintiff that contained disputed information requiring a reinvestigation.
- **Reinvestigation.** A consumer who brings a [§ 1681i](#) failure to reinvestigate claim must first show that his credit file contains inaccurate or incomplete information. Plaintiff has presented no facts suggesting that information about someone else is in *his* file at Intelius. To the extent Plaintiff alleges that the information on him should have been reinvestigated but was not, he has not made any allegations that any information produced or held by Intelius held in connection with *him* is inaccurate.

Court Grants Furnisher’s Motion to Dismiss Plaintiff’s FCRA Claims Because Furnisher Did Not Receive Notice of a Dispute From a CRA

***Carruthers v. American Honda Finance Corp.*, 2010 U.S. Dist. LEXIS 67349 (N.D. Fla. June 3, 2010)**

Facts: Plaintiff leased an automobile from Defendant. After surrendering the car at the end of the lease term, the Defendant found damage and sent the Plaintiff a bill for the cost of the repair. Plaintiff refused to pay, invoking a specific lease provision dealing with minor damage. While the dispute was ongoing, the Defendant reported the non-payment to a CRA. Plaintiff filed suit asserting claims under the [FCRA](#) and state law. Defendant filed a motion to dismiss for failure to state a claim under [Rule 12\(b\)\(6\)](#) and the Court granted the motion.

- **Furnisher's Duties.** Plaintiff's complaint fails to state a claim on which relief can be granted under either subsection (a) or (b) of [§ 1681s-2](#) of the FCRA. Subsection (a) creates no private right of action; only certain state and federal officials may enforce the subsection. Subsection (b) creates a private right of action, but the subsection applies by its plain terms only when the furnisher receives notice of a dispute from a CRA. According to the complaint, Defendant received notice of Plaintiff's dispute from Plaintiff himself, not from a CRA.
- **Preemption.** Plaintiff's state law claims are preempted under [§ 1681t\(b\)\(1\)\(F\)](#). While breach of contract claims ordinarily are not preempted, Plaintiff does not allege that Defendant violated a specific term of the contract (the lease agreement). Instead, he alleges that Defendant violated the "covenant of good faith and fair dealing in every contract under Florida law." The duty of good faith and fair dealing is implied by law, not voluntarily assumed. Thus, all of Plaintiff's state law claims, including the claim that Defendant violated the duty of good faith and fair dealing, are preempted.
- **Preemption.** Plaintiff asserts that Defendant acted with malice, thus saving his claim from preemption under [§ 1681h\(e\)](#). The total-preemption approach to reconciling [§ 1681t\(b\)\(1\)\(F\)](#) and [§ 1681h\(e\)](#) is the correct reading of the statutes. This approach holds that [§ 1681t\(b\)\(1\)\(F\)](#) means what it says and thus preempts any state law claim against a furnisher arising from a requirement or prohibition imposed by state law, regardless of whether the claim is derived from statutory or common law, and regardless of when the claim arose. Plaintiff's state law claims are preempted.

Plaintiff's Claims Against Mortgage Lender Dismissed for Failure to State a Claim

***Corcoran v. Saxon Mortg. Servs.*, 2010 U.S. Dist. LEXIS 51040 (D. Mass. May 24, 2010)**

Facts: Plaintiff brought suit in state court against Saxon Mortgage Services, Inc. ("Saxon"), his mortgage lender, for various violations of state and federal law, including breach of contract, unjust enrichment, negligence, violation of the [Truth in Lending Act](#), breach of fiduciary duty, predatory lending, fraud and breach of the covenant of good faith and fair dealing. Saxon removed the case to federal court and moved to dismiss all counts. Plaintiff opposed the motion and also requested leave to file an amended complaint, asserting several additional federal law claims, including a cause of action under the [FCRA](#).

- **Furnisher Duties.** Plaintiff sought leave to amend to add a claim under [§ 1681s-2\(a\)](#) of the FCRA, which relates to furnisher duties when providing information to a CRA. Since [§ 1681s-2\(a\)](#) creates no private cause of action, Plaintiff's attempted claim failed. Accordingly, his Motion for Leave to Amend was denied as the proposed claim would have been futile.

Court Rejects Fair Isaac's Post-Trial Motions after Jury Finds for Defendant CRAs in Trademark Case Related to "300-850" Scoring Model

Fair Isaac Corp. v. Experian Info. Solutions, Inc., 2010 U.S. Dist. LEXIS 45323 (D. Minn. May 10, 2010)

Facts: Plaintiffs, Fair Isaac Corporation and myFICO Consumer Services, Inc. ("Fair Isaac"), asserted claims against multiple defendants including Experian, Trans Union, Vantage Score Solutions, LLC and others for antitrust violations, trademark infringement of its "300-850" trademarks, as well as unfair competition, deceptive trade practices, false advertising, passing off, breach of contract, interference with contract, and misappropriation of trade secrets claims. After Fair Isaac abandoned its claims for misappropriation of trade secrets, the Court granted summary judgment in favor of Defendants on Fair Isaac's antitrust, breach of contract, interference with contract and false advertising claims. The remaining trademark-related claims, as well as Defendants' counter-claim for fraud on the United States Patent and Trademark office ("PTO") proceeded to trial, where the jury returned a verdict in favor of Defendants, finding that Fair Isaac's "300-850" trademarks, which the Court previously ruled were "descriptive," had not acquired secondary meaning. The jury's verdict was a wholesale unambiguous rejection of Fair Isaac's central theory of the case -- that one can legitimately claim trademark protection in the numerical range for credit scores. The jury also found in favor of Defendants' counter-claim for fraud on the PTO. The parties subsequently filed multiple post-trial motions, including Fair Isaac's Motion for Judgment as a Matter of Law, a New Trial, or Detailed Findings, which were denied, and Defendants' Motion to Amend the Judgment to Order Cancellation of Trademark Registration, which was granted.

- **Fraud.** Fraud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his application. The Court concluded that sufficient evidence existed in the record to support the jury's verdict of fraud on the PTO. The jury was shown evidence that when Fair Isaac represented to the PTO that "300-850" is the credit scoring scale only for Fair Isaac's credit bureau-based risk products and not for other credit bureau-based risk products that competitors develop, the Court determined that: 1) such representation was false because competitors sold credit bureau-based risk products that did in fact use the same or nearly the same, scoring range; and, 2) Fair Isaac knew these competitors sold such products. Accordingly, Fair Isaac's Motion for a Judgment as a matter of law or a new trial regarding the fraud claim on the PTO was denied.
- **Trademark.** In the summary judgment ruling, the Court concluded that the term "300-850" was merely descriptive and, thus, entitled to trademark protection only if it had acquired secondary meaning. Fair Isaac argued that the categorization of a trademark is ordinarily a factual determination and the Court's ruling erroneously stripped the jury of its fact-finding role. The Court recognized that whether a mark is merely descriptive as opposed to suggestive or arbitrary is typically a question of fact. Nevertheless, appellate courts, including the Eighth Circuit, have affirmed decisions by district courts that a term is, as a matter of law, generic or merely descriptive as opposed to suggestive. Accordingly, the categorization of "300-850" as descriptive was appropriately resolved on summary judgment.

- **Trademark.** “Secondary meaning” is established by showing that through long and exclusive use and the sale of the user’s goods, the mark has become so associated to the public mind with such goods that the mark serves to identify the source of the goods and to distinguish them from those of others. Fair Isaac argued that the jury’s finding that “300-850” had not acquired secondary meaning was contrary to the great and overwhelming weight of the evidence. However, a considerable amount of evidence supported the jury’s verdict, including evidence that Fair Isaac’s marketing and advertising efforts focused more prominently on Fair Isaac’s other trademarks, and when “300-850” was mentioned in advertisements, the term was used in a descriptive manner rather than as a trademark. In addition, the lack of evidence regarding secondary meaning supported the jury’s verdict. Both sides identified evidence in the record in support of their positions. The Court accepted that the jury resolved the evidentiary conflict in favor of Defendants and could not disturb the weight the jury afforded to the evidence.
- **Trademark.** Defendants moved for the Court to amend the Judgment to include an Order that directs the PTO to cancel Fair Isaac’s “300-850” trademark registration in light of the jury’s: 1) finding that “300-850” had not acquired secondary meaning; and, 2) verdict on Defendant’s counter-claim for fraud on the PTO. A Court may order cancellation under [15 U.S.C. § 1119](#) when a trademark at issue in the action is found invalid because it is descriptive and has not acquired secondary meaning. The Court agreed with Defendants that ordering cancellation would further judicial economy, conserve resources, and allow Appellate review of the Court’s ruling in a single appeal. Accordingly, Defendants’ Motion to Amend the Judgment to Order Cancellation of Fair Isaac’s trademark registration was granted.

Inaccuracy on Consumer Report was Enough to Create a Fact Issue Under 15 U.S.C. § 1681e(b)

***Robertson v. Experian Info. Solutions, Inc.*, 2010 U.S. Dist. LEXIS 39616 (M.D. Pa. April 22, 2010)**

Facts: Plaintiff filed suit against Trans Union, Experian, and National Recovery Agency, Inc. (“NRA”) for damages she sustained when Trans Union and Experian allegedly distributed inaccurate information about a collection account on her consumer report. The collection account allegedly arose out of a debt owed to BMG Music Club, which Plaintiff claimed she paid. Plaintiff’s BMG Music Club account was subsequently transferred to NRA for collection and was reported by NRA to Experian and Trans Union. On March 28, 2009, Plaintiff disputed the accuracy of the account with Experian. In response to Experian’s reinvestigation, NRA verified the account on April 16, 2009. Plaintiff disputed the accuracy of the account a second time with Experian on April 22, 2010. Experian was once again informed by NRA that the collection account information was accurate. Plaintiff filed the instant lawsuit on May 5, 2009 claiming, among other things, that the CRAs negligently and willfully violated [§§ 1681e\(b\)](#) and [1681i](#) by failing to maintain reasonable procedures and failing to appropriately reinvestigate her dispute. Plaintiff alleged that, after filing suit, she disputed her account with Trans Union for a second time on May 9, 2009. However, Trans Union maintained that this was the first and only time Plaintiff disputed her NRA account with Trans Union. Trans Union deleted the NRA

account from Plaintiff's Trans Union consumer report on May 12, 2009 after a timely reinvestigation. On or about June 23, 2009, NRA contacted Experian and requested that it delete the collection account from Plaintiff's consumer report. Both CRAs filed Motions for Summary Judgment which were granted in part and denied in part.

- **Inaccuracy.** To prove a case of negligent noncompliance with § 1681e(b), a plaintiff must prove: (1) inaccurate information was included in the plaintiff's consumer report; (2) the inaccuracy was due to defendant's failure to follow reasonable procedures to assure maximum accuracy; (3) injury to the consumer; and (4) the consumer's injury was caused by the inclusion of the inaccurate entry. Both Experian and Trans Union contend that Plaintiff cannot establish a claim under § 1681e(b) because (1) Plaintiff failed to establish causation; (2) both CRAs followed reasonable procedures to ensure the accuracy of Plaintiff's consumer report; and (3) Plaintiff failed to show an actual injury.
- **Reasonable Procedures.** The Court held that "[r]easonable procedures are those that a reasonably prudent person would undertake under the circumstances Typically, the question of reasonableness is reserved for the trier of fact." The Court then expounded on three different standards used in the Third Circuit to determine whether a plaintiff has met its burden of proof for a § 1681e(b) claim.
 - Under the most stringent standard, the burden of proof remains with a plaintiff to produce some evidence from which a trier of fact can infer a failure to follow reasonable procedures. This standard requires the plaintiff to produce minimal evidence from which a trier of fact can infer a failure to follow reasonable procedures to survive summary judgment.
 - The middle standard states that a plaintiff may survive summary judgment on a § 1681e(b) claim by merely showing an inaccuracy in the consumer report. However, a defendant could still prevail on summary judgment if it were able to produce evidence that demonstrates as a matter of law that the procedures it followed were reasonable.
 - Under the least stringent standard, once a plaintiff demonstrates inaccuracies in a consumer report, the burden shifts to the defendant to prove reasonable procedures as an affirmative defense.
- **Reasonable Procedures.** The Court held that under two of the three standards, Plaintiff met her burden by merely producing undisputed evidence of an inaccuracy in her consumer report. The fact that Trans Union may not have known of the inaccuracy until after Plaintiff's dispute is irrelevant. Plaintiff produced evidence that her consumer reports were inaccurate and the CRAs failed to rebut that evidence. Therefore, the Court held that Plaintiff met her burden and the CRAs' motions for summary judgment on this claim were denied.
- **Damages.** The Court held that Plaintiff "proffered sufficient evidence of a plausible injury including damages for emotional distress" to survive summary judgment. Plaintiff's evidence consisted of letters from a bank and a credit union reducing her credit limit and relying in whole or in part on consumer reports received by Trans Union and Experian. In addition, Plaintiff testified at her deposition that she lost credit opportunities



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by not applying for a company credit card because of fear that her low credit score, caused by inaccurate consumer reports, would cause her to be denied. She also claimed to be suffering from emotional distress, specifically fibromyalgia, as a result these issues. The Court concluded that Plaintiff presented sufficient evidence of an actual injury and emotional distress to proceed with her claim.

- **Reinvestigation.** Trans Union and Experian argued that there is no evidence that they failed to reasonably reinvestigate Plaintiff's dispute. The Court disagreed. Plaintiff alleged that: (1) she gave adequate notice of the inaccurate credit information contained in her consumer reports; (2) she made two attempts to correct this information on both her Trans Union and Experian consumer reports; and (3) the only responses that she received were responses from both CRAs stating that the information was verified. The Court held that this evidence was sufficient to create a triable issue on whether the reinvestigations by Trans Union and Experian were reasonable.
- **Punitive Damages.** [Section 1681n](#) allows for the award of punitive damages when any person willfully fails to comply with any requirement imposed under the FCRA in such amount as the court may allow. The Court held that Plaintiff offered no evidence indicating willful or reckless conduct on the part of Trans Union or Experian. Thus, the Court granted summary judgment and dismissed Plaintiff's claims for punitive damages.

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