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RECENT TRENDS IN CONSUMER LITIGATION

In this article, after an overview of the Fair Credit Reporting Act and the Fair Debt Collection Practices Act, the authors turn to Spokeo *challenges to standing, developments in consumer class actions, and other recent trends in litigation under the acts.*

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Over the past decade, civil litigation under the Fair Credit Reporting Act ("FCRA") has surged, and putative class actions are being brought under the FCRA with increasing frequency. This article provides an update on recent litigation trends under the FCRA, along with a brief history of the statute. The same is true under the Fair Debt Collection Practices Act ("FDCPA"), which year after year represents the largest source of consumer litigation.

A recognition of such trends can assist the many entities touched by the FCRA and FDCPA – employers, consumers, background screening companies, creditors, debt collectors, and data furnishers – to better access their compliance and avoid the substantial risks of litigation that are presented by those statutes.

I. THE FAIR CREDIT REPORTING ACT

The FCRA governs the collection, assembly, and use of consumer report information in the United States.[1] Enacted in 1970, the FCRA has since been amended several times. The two most extensive amendments were the Consumer Credit Reporting Reform Act of 1996 (the "1996 amendments") and the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act").

The FCRA regulates the practices of consumer reporting agencies ("CRAs") that collect and compile consumer information into consumer reports for use by credit grantors, insurance companies, employers, landlords, and other entities in making eligibility decisions. The FCRA was enacted to: (1) prevent the misuse of sensitive consumer information by limiting recipients to those who have a legitimate need for it and (2) improve the accuracy and integrity of credit reporting systems. Under the FCRA, CRAs are required to establish procedures to ensure accuracy and legitimacy in reporting, disclose information in their files to consumers, and investigate disputed items.

The Consumer Credit Reporting Reform Act of 1996 expanded the duties of CRAs, particularly in regard to disputes – establishing a time frame for investigations, mandating written notice of the results and adding restrictions on the reinsertion of deleted items. The 1996 amendments also increased the obligations of "users" of consumer reports, particularly employers. Most

[1] The summary that follows has been drawn extensively from the background provided by the Federal Trade Commission in its report: "40 Years of Experience with the Fair Credit Reporting Act, an FTC Staff Report with Summary Interpretations" (July 2011).

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INSIDE THIS ISSUE