# Lawsuits Over Credit Report Errors Booming

## Mistakes Common; Litigation Simple, Inexpensive

***By James L. Dam***

Litigation over credit report mistakes, which has been skyrocketing in recent years, recently resulted in the largest-ever award under the Fair Credit Reporting Act - $5.3 million (including $5 million in punitive damages).

The huge award is likely to encourage more suits against credit reporting agencies and the businesses that supply them with information, as well as prompt more litigation against businesses for accessing credit reports for unlawful purposes

According to lawyers, these lawsuits generally are not very difficult or expensive, and they usually settle quickly, partly because defendants fear jurors who have experienced credit-reporting problems of their own or know someone who has.

David Szwak, a plaintiffs' attorney in Shreveport, La., said that credit agencies "recognize that they are not viewed in the best light and that a jury will whack them."

The record $5.3 million award, which came July 29 in a federal court in Oregon, involved a plaintiff whose credit report included information about another person with a similar Social Security number - a problem that the agency failed to correct even after repeated complaints by the plaintiff.

Experts tell Lawyers Weekly USA that credit errors like the one in the Oregon case are extremely common. It has been estimated that over a third of all credit reports contain errors serious enough to cause a denial of credit.

New York plaintiffs' attorney James Fishman said more big verdicts should be expected. "It's going to be like a dam breaking, similar to what happened in tobacco litigation."

As little as five years ago, said Fishman, "credit reporting litigation maybe got an hour's attention at a national consumer law conference. Now it gets its own conference. That's how much it's grown in the last five years."

Credit-report litigation may become especially attractive to consumer bankruptcy attorneys if the bankruptcy reform legislation pending in Congress is enacted.

Earl Underwood of Anniston, Ala., said that he has already shifted his practice from consumer bankruptcy to consumer credit litigation, because if the bankruptcy bill passes, consumer bankruptcy "will require so much work that lawyers won't be able to do it."

**The Oregon Verdict**

The plaintiff in the Oregon case, Judy Thomas, discovered in 1996 that her credit report from defendant Trans Union included about a dozen accounts for a Judith Upton, and that the report identified Thomas as "Judy Thomas, aka Judith Upton."

The reason for the mix-up appeared to be that the Social Security numbers of the two women differed by only one digit.

After Thomas complained, Trans Union deleted a few of the Upton accounts, but it allowed most of them to remain after verifying them with creditors.

According to Thomas, creditors verified the accounts because Trans Union did

not give them all the information she had provided, but instead just sent them a form message saying the accounts were in dispute.

Evan Hendricks, editor of the Washington-based newsletter "Privacy Times," who testified at trial, said that credit reporting agencies typically verify accounts by simply asking the creditor, "Is this what you reported?"

Three years later, in 1999, Thomas was denied a mortgage because her Trans Union credit report again contained numerous accounts belonging to Upton, including ones that had been deleted in 1996 but had reappeared.

By contacting creditors and supplying Trans Union with more information, including a supportive letter from Upton, Thomas was eventually able to get most of the Upton accounts deleted.

However, some accounts for Upton continued to appear on Thomas's report, and the report continued to identify her as "Judy Thomas, aka Judith Upton" until December 2001.

Thomas sued Trans Union under the Fair Credit Reporting Act for negligently allowing the errors and failing to correct them. She also sought punitive damages, which can be awarded under the act if the defendant's conduct was willful.

In addition, Thomas sued the credit-reporting agency Equifax, which had included Upton accounts on her credit report but was more successful in correcting the errors, and the creditors that mistakenly verified her accounts.

Equifax and the creditors agreed to confidential settlements. Trans Union, however, refused to offer more than $15,000, according to Michael Baxter of Portland, Ore., one of the plaintiff's attorneys.

After a one-week trial, the jury awarded Thomas $300,000 for emotional distress and damage to her reputation, plus $5 million in punitives.

Thomas is now seeking to recover $150,000 in attorney fees, since the act allows successful plaintiffs to recover their fees and costs.

**Booming Litigation**

A 1998 study by the U.S. Public Interest Research Group found that 29 percent of credit reports contain errors serious enough to cause a denial of credit.

Over half the errors arise from people's files being mixed together, as in Thomas' case.

According to Hendricks, the error rate today is probably much higher, partly because of widespread errors resulting from "identity theft," where an imposter runs up debts in someone else's name. Not only does the victim end up with the debts, but information about them is also included in his or her credit report.

Hendricks said that credit reporting agencies don't try very hard to keep false information out of reports because their goal is to serve creditors, who prefer that they err on the side of over-inclusion.

As a result, agencies will include account information in a report even if the identifying data for the account - such as name, address, Social Security number and date of birth - doesn't match up exactly with the individual's identifying data.

"Their matching program is very loose," said Szwak.

As reporting errors become more common, increased problems are caused because businesses are relying on the reports more frequently.

"We're seeing credit reports used in more and more ways by insurance companies,

landlords, employers and many others," said Szwak.
The result has been more litigation over reporting errors.
This litigation has also grown because of 1996 amendments to the Fair Credit Reporting Act, which made it possible to sue not only credit reporting agencies, but also creditors for mistakenly verifying information after a person has complained that it is incorrect.
Creditors have argued that the 1996 amendments do not allow a private right of action against them, and some judges have agreed. But that argument was rejected earlier this year by the 9th Circuit. (*Nelson v. Chase Manhattan Mortgage Corp.*, 282 F.3d 1057; See "Consumer Can Sue Bank For False Credit Report," Lawyers Weekly USA, March 18, 2002; Search words for LWUSA Archives: disrespect and outraged.)
Attorney Richard Rubin of Santa Fe, Calif., who chairs the National Association of Consumer Advocates, said that suing both the agency and the creditor is important, because otherwise the agency could convince the jury that the creditor is to blame and the plaintiff would get nothing.
Lawsuits are also increasingly being brought against businesses for accessing credit reports for unlawful purposes.
A large portion of these suits have been against car dealerships for accessing credit reports on customers even though the customer did not apply for credit.
Car dealers will do this when a new customer calls, "to see if the they want to fool with him," said Underwood.
Rubin said they will also do it when a customer is out test-driving a car, often using information from the customer's driver's license to get the report.
"They use the report to learn about you, including how much disposable income you have, and your likes and dislikes," he said.
Suits have also been brought against other businesses, such as stores, for accessing credit reports for marketing purposes.

**Worthwhile Lawsuits**

According to lawyers, lawsuits over reporting errors are relatively easy and inexpensive to handle, as long as the plaintiff complained to the credit-reporting agency about the problem, and the agency failed to correct it.
A suit could still be brought under the Fair Credit Reporting Act for errors if the agency fixed them promptly, or even if the plaintiff didn't ask that they be fixed. However, in those instances the plaintiff could only establish liability if he could show that the procedures followed by the agency were unreasonable, which could be very difficult.
Sylvia Antalis, a plaintiffs' attorney in Sandusky, Ohio, said that with such a claim, agencies "will litigate you to death."
But where the plaintiff has complained and the errors weren't fixed, proving negligence - the standard for liability under the act - is much easier.
If the agency didn't fix the errors even though it was repeatedly told about them, said Seattle plaintiffs' attorney Christopher Green, "something is wrong with the system or they just hate my client. Either way, the credit bureau is in trouble."
Proving damages for emotional distress is also generally easy, said Green, as most clients "have been absolutely tearing their hair out for months on end as the

erroneous information keeps coming back on their reports."
Some courts will not allow damages for emotional distress if the reporting errors didn't cause a denial of credit, but others will.
Recovering punitive damages by proving a willful violation of the law is more difficult, but not impossible, since a showing of malice is not required.
Expenses in most cases are typically under $10,000. They can be higher if depositions of numerous defendants need to be taken in various states, or if experts are retained on issues of both liability and damages, but cases generally settle before much expense is incurred.
Settlements can range from a few thousand dollars to $200,000.
Lawyers warn that the Fair Credit Act and the courts' interpretations of it can take a while to learn, and therefore attorneys may first want to work with an experienced co-counsel.
They also warn that cases may not be worth pursuing if a plaintiff doesn't have a good credit record apart from the errors.
The problem in those cases, said Szwak, is that juries are unlikely to award damages if the plaintiff already had bad credit, and the effect of the errors was just to add more bad credit.
Lawsuits over unlawful access to credit reports are even easier and cheaper than lawsuits over reporting errors.
The key to these cases is that credit reports must list everyone who has accessed a report during the past year.
In fact, most reports will go back several years, said Green.
Lawyers can find cases just by looking at clients' credit reports and seeing if anyone accessed the report who would not have had a lawful purpose, such as a car dealership at which the client never applied for credit.
Proving liability, including the willfulness needed for punitive damages, is generally very easy.
Underwood said these are "pretty straightforward cases, especially if a customer merely called a car dealership. The dealership may not even have a record of any contact with the client. If you say they had no permissible reason to pull the report, there's no way they can show they had one."
The expenses and work involved in unlawful access cases are usually minimal, and they generally settle quickly for a few thousand dollars.
Damages are awarded for invasion of privacy, along with punitive damages. As in suits over reporting errors, successful plaintiffs are entitled to attorney fees.
Clients may also have been harmed financially, because any accessing of a person's credit report can lower his or her credit "score," said attorney David Mour of Louisville, Ky.
*Questions or comments can be directed to the writer at*: jdam@together.net

© 2002 Lawyers Weekly Inc., All Rights Reserved.