

Top credit bureaus slammed by suits

Litigation grows over low scores.

By Tresa Baldas
STAFF REPORTER

THE NATION'S THREE top credit bureaus are being slammed with a growing number of lawsuits filed by consumers who allege that the agencies are severely damaging their credit worthiness.

Scores of lawsuits challenging credit-report errors and low credit scores are pending in several states, including California, Louisiana, Michigan, Mississippi, New Mexico, South Carolina and Virginia.

Consumers allege that the bureaus—Equifax, TransUnion and Experian—are engaging in a practice that artificially lowers their credit scores, and that they are ignoring pleas to remove inaccurate information from the reports.

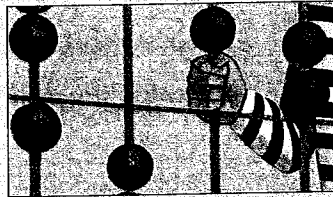
"It is becoming more and more prevalent that people are fighting back and suing credit bureaus and information fur-

nishers who can't get it right without filing a lawsuit," said James Fishman of New York's Fishman & Neil, who has handled about 100 credit lawsuits in the last five years on behalf of plaintiffs.

"I've always told clients who come in and have been banging their heads against the wall, 'It

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takes a lawsuit to get your thing solved," he said.

Fishman, who settles about 99% of his cases, believes litigation works.

"When I go to court, the first thing I'm handed (from the defense) is a clear credit report," Fishman said. "You don't get that unless you walk into the courtroom."

Adam Taub, a Michigan consumer attorney who has handled numerous lawsuits against the credit bureaus and debt collectors, noted that "[i]n the last two or three years, just the number of calls on this particular issue has increased by 100%, probably more.

"Most of the people who come to my office are not particularly interested in filing a lawsuit right out of the gate," said Taub of the Lyngklip & Taub Consumer Law Group in Southfield, Mich. "Most of them have a problem. They're tearing their hair out. They're losing sleep.... They're hopeful that the credit bureaus are going to do the right thing and remove the bad information."

But all too often, he added, nothing happens, so then comes the lawsuit.

"After being ignored over and over and over again, finally you have to do something to get their attention, and in this particular arena, it appears the only option is to bring a suit," Taub said.

ID theft spurring action

Attorneys noted that in recent years, consumers have been spotting mistakes on their credit reports because they've been checking them more often, largely because of identity-theft fears. With free credit reports now available in all states, mistakes aren't hard to miss. And "credit-freeze" laws enforced in 22 states—that bar lenders or anyone from reviewing a person's credit history—also prevent identity thieves from opening fraudulent accounts.

There are also those who learn about bad credit the hard way: They go to buy a house or a car, and they are denied a loan or a lower interest rate because of a tainted credit report or a low credit score they were not aware of.

In both cases, plaintiffs allege that the credit bureaus are shirking their responsibility to maintain accurate records and thoroughly investigate cases involving false information, which is required under the Fair Credit Reporting Act (FCRA).

Plaintiffs making those claims got a recent boost from the 5th U.S. Circuit Court of Appeals, which ruled on July 24 that the credit bureaus are ultimately responsible for the reinvestigation of disputed information in their systems and cannot shirk that responsibility by blaming another group for the false information. *Morris v. Equifax Information Services*, 2006 WL 2043567.

Officials at Equifax and TransUnion declined comment for this story, as did attorneys contacted who are defending them in a number of lawsuits.

Experian also declined comment on the pending litigation, but defended its reputation as a gatekeeper of more than 215 million credit files.

"We have many decades of experience in both managing and safeguarding the privacy and robustness of the consumer credit files under our care, and we take

that responsibility very seriously," said Experian spokesman Donald Girard.

"One of the newest challenges for Experian is the relentless attack of phishers, scam artists, identity-fraud cheats and others who would seek to exploit the nations' credit system for their own gain," Girard added.

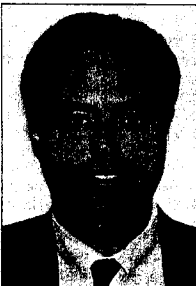
"Experian has developed increasingly sophisticated tactics and tools to safeguard its databases... and it will continue to do everything in its power to ensure that consumers' data is used only for the purposes allowed by federal law."

In a recent lawsuit that Equifax settled with a New Mexico woman who sued over an allegedly botched credit report, Equifax also defended its record-keeping tactics. The case involved a small-town teacher whose credit report contained information that belonged to another woman with the same name, but who had had credit. The woman sued Equifax over the mix-up and for allegedly allowing the false information to remain on her credit file for more than two years. *Apodaca v. Discover*, No. CIV-04-0717 (D.N.M.).

"At all pertinent times, Equifax has acted in good faith and without intent to injure plaintiff," Equifax stated in court documents. "[A]ny alleged damages sustained by plaintiff were, at least in part, caused by the actions of plaintiff and resulted from plaintiff's own negligence, which equaled or exceeded any alleged negligence or wrongdoing by Equifax."

The woman's attorney, Rob Treinen of Feferman & Warren in Albuquerque, N.M., said that Equifax put up a tough fight, but eventually settled in May for an undisclosed amount.

"It basically takes a lawsuit to get these things sorted out," Treinen said. "Our client gave Equifax everything that they would need to fix that.... They absolutely would not own up to what had happened."

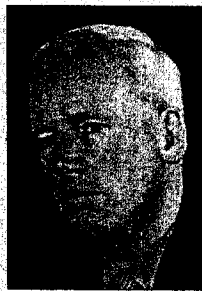


JAMES FISHMAN: It takes a lawsuit to solve credit inaccuracies, he said.

Meanwhile, in South Carolina, the credit bureaus are battling a new kind of legal claim that has caught the attention of consumer rights' lawyers nationwide. A consumer has filed three class actions against the bureaus claiming that they are engaging in a practice that is artificially lowering credit scores. The practice involves allowing credit card companies—in this case, Capital One Financial Corp.—to withhold a customer's credit limit from his or her credit file, which lowers the credit score. *Harris v. Experian Information Solutions*, No. 6:06-1808-GRA (D.S.C.).

Attorney William Narwold of Mount Pleasant, S.C.-based Motley Rice, who is representing the plaintiff in the suits filed on June 15, explains how it works.

Credit card companies typically submit two numbers to the credit bureaus: a high balance, or how much is typically owed over time, and a consumer's credit limit. The scoring system used by the



WILLIAM NARWOLD: Bureaus not ensuring "maximum accuracy."

credit bureaus compares the high balance against the credit limit. But if the company neglects to report the credit limit, the scoring software automatically assumes that the high balance and credit limit are one in the same.

For example, if the consumer has a \$5,000 credit limit that goes unreported, but only a \$1,500 balance, it will appear as though the consumer has maxed out his or her card at \$1,500, which results in a lower credit score.

And that, argued Narwold, causes consumers to lose out on lower interest rates for cars, homes and personal loans.

"All of a sudden, their not reporting information costs you money," Narwold said.

Narwold's suits claim that by not requiring credit card companies to report credit limits, the credit bureaus are violating the FCRA by not taking reasonable steps "to ensure maximum possible accuracy."

"That's the magic language from the statute. It's a pretty tough standard," Narwold said.

Tough cases prove

Attorney Ian Lyngklip, co-chairman of the National Association of Consumer Advocates, who trains attorneys in the area of identity theft and fair credit reporting, noted that there has been a growing interest among lawyers who want to litigate such cases. Currently, there are about 200 lawyers nationwide experienced in this area, he said, noting that as many as 270 lawyers have participated in his training seminars in recent years.



A. HUGO BLANKINGSHIP: The bureaus saw a problem, but didn't fix it.

Lyngklip, whose Michigan firm is handling about 20 lawsuits against the credit bureaus over erroneous credit and is investigating another 40 such cases, stressed that credit-reporting lawsuits against the bureaus are tough to prove.

For example, he said, a credit bureau might remove false information from a file. But a debt collector will continue to go after the person, then submit another file to the credit bureau—and the information pops up again.

"It's a very difficult suit to win," Lyngklip said.

Difficult, but not impossible, as Virginia attorney A. Hugo Blankingship III can attest to.

On July 14, a jury ordered Equifax to pay his client, an identity-theft victim, \$351,000 over erroneous information that kept appearing on her credit report. *Sloan v. Equifax Information Services*, No. 1:05-CV-1272, (E.D. Va.)

Sloan had filed against all three bureaus, but Experian and TransUnion settled for undisclosed amounts. The case

involved a woman who had her Social Security number stolen by a hospital employee while giving birth to her child in 2003. The employee used it to open numerous accounts and ran up huge debts.

The identity thief was arrested in March 2004 and later sentenced to two years in prison. But the victim spent two years trying to clear up her credit.

"She wrote letters: She called them. They saw the problem. They just didn't fix it," said Blankingship of Blankingship & Associates in Alexandria, Va.

Attorneys at Kilpatrick Stockton in Atlanta, the firm that represented Equifax in the *Sloan* trial, declined comment, as did company officials.

TransUnion and Experian officials also declined comment on the *Sloan* case. ■

NEW YORK

Software bug hits Enron suits

By Ben Hallman
THE AMERICAN LAWYER

THE COMPANY HANDLING electronic document production in the Enron civil suits said that a software bug may have erased text in e-mails produced for discovery in the case over an 18-month span.

Applied Discovery Inc., a Bellevue, Wash.-based division of LexisNexis, said one client has reported a problem so far. And lawyers handling the Enron litigation said it was too early to predict the potential impact. But several of the lawyers, speaking on condition of anonymity, said that if the problem was widespread and had corrupted the discovery process, it could cost tens of millions of dollars to fix and could foul up both pending and settled Enron litigation.

So far, no one is panicking. Scott Nagel, a vice president and managing director at Applied described the problem as "pretty small in scale." He said that his company was working with Microsoft Corp., which produces the e-mail pro-

gram at the heart of the problem, and the client that first reported the issue to come up with a fix. The company declined to name the client.

The issue was disclosed in a July 7 letter sent by Paul, Weiss, Rifkind, Wharton & Garrison to all of the counsel in the largest Enron civil suit, *Newby v. Enron Corp.* Paul Weiss would not comment on the problem nor would it say whether it was the client affected by the glitch.

The firm's letter, however, said that "according to Applied Discovery, when Microsoft Outlook 2003 is used to open e-mails created in prior versions of Outlook, some e-mails appear to be blank." As a result, "responsive information" in the original e-mails would not be identified through electronic searches or manual review. "The problem appears to affect electronic e-mail processing handled by Applied Discovery during the period of October 2004 through April 2006—and quite possibly electronic e-mail processing handled by other document processing vendors." ■