



News

AccountsRecovery.net Calls on Justin Penn to Analyze Case Law and Compliance Topics that Shaped the ARM Industry in 2024

January 8, 2025

AccountsRecovery.net recently asked Hinshaw partner Justin Penn for his perspective on "the most impactful compliance topics and caselaw that shaped 2024 for companies in the credit and collection industry."

Penn was among four "industry compliance experts" to contribute columns. He highlighted how a rising number of claims under the Fair Credit Reporting Act (FCRA) is impacting the debt collection industry and how the inclusion of credit bureaus as codefendants can alter settlement ranges and defense strategies.

Along with developing a robust defense plan to navigate evolving litigation, Penn stresses the importance of managing discovery and associated costs while preparing for a summary judgment filing, especially in cases involving minimal consumer damages.

Penn writes:

One trend on the litigation front is the shift to claims under the Fair Credit Reporting Act. This shift has caused a few ripple effects in defending the industry on consumer cases. First, many FCRA cases also name the credit bureaus as defendants. Debt collectors and debt buyers have been very shrewd on which cases to fight, and the industry has done a very good job of keeping the settlement value of cases more reasonable. While the bureaus will litigate some cases, when they settle, they tend to offer substantially more than our industry has offered in the past.

We have seen these settlements drive the settlement range up for the other side or alternatively result in the bureaus settling out, potentially funding the litigation against the ARM industry remaining defendant. Somewhat relatedly, in the event the FCRA cases do not settle, there is more discovery to be done, including from the settling codefendants.

This additional discovery if not properly managed can drive up both the defense costs as well as the potential exposure in the event of an unfavorable ruling. The good news is that when the right cases are defended, discovery often reveals no damages to the consumer, which makes the FCRA cases good candidates for summary judgment in the absence of willful violations.

Attorneys

Justin M. Penn

Service Areas

Consumer Financial Services

Mortgage Servicing and
Lender Litigation



But unfortunately, presenting the defense of lack of damages in an FCRA case (and the related, if appropriate, lack of standing defense) is not usually ripe until summary judgment. The ultimate take away from this trend is to make sure you have a solid plan at the beginning of the defense of the case to both manage costs of defense and mitigate for damages. The risk of unpredictable trial outcomes can increase with these cases.

Read the full January 6, 2025 article on the [AccountsRecovery.net Compliance Digest](#) website.

- "The Case Law and Compliance Topics That Shaped the ARM Industry in 2024" was published by *net* on January 6, 2025.