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ANALYZING THE FAIR CREDIT REPORTING ACT'S NEW "OBJECTIVELY AND READILY VERIFIABLE" STANDARD TO SHOW AN INACCURACY

This article examines the evolving interpretation of the Fair Credit Reporting Act's "objectively and readily verifiable" standard for establishing inaccuracies in consumer credit reports. It analyzes recent federal appellate decisions that have shifted away from the traditional factual-versus-legal dichotomy, instead focusing on whether alleged inaccuracies can be confirmed through straightforward, objective verification. The article surveys key cases from the Second, Fourth, Fifth, and Eleventh Circuits, tracing the shift from the factual-versus-legal analysis to a more nuanced focus on whether alleged inaccuracies can be objectively and readily verified. By reviewing both appellate and district court decisions, the article provides guidance for practitioners on distinguishing between cognizable claims and those that fall outside the statute's scope under the new standard.

By Bryan A. Fratkin *

The Fair Credit Reporting Act ("FCRA") governs our country's credit reporting and, relevant here, allows consumers to sue furnishers and consumer reporting agencies ("CRAs") when they report inaccurate information on consumers' credit reports and then fail to reasonably investigate consumers' disputes trying to correct that inaccurate information.¹ The caselaw is well-developed on the CRAs' and furnishers' duties when investigating consumers' disputes, and this article will not retread there.² Recently, courts have focused on the threshold requirement that a consumer establish an

"inaccuracy" in the credit reporting. This article discusses the recent caselaw that defines what "inaccuracy" means under the FCRA.

FCRA BACKGROUND

The FCRA requires CRAs to follow reasonable procedures to assure maximum possible accuracy of the information about consumers in their consumer reports.³ If a consumer disputes the accuracy of information contained in the consumer's CRA file, the FCRA also requires CRAs to "conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate."⁴ Similarly, once they receive notice of a dispute from a CRA, furnishers must also review "all

¹ See generally 15 U.S.C. §§ 1681, 1681n & 1681o.

² See, e.g., *Johnson v. MBNA Am. Bank*, 357 F.3d 426 (4th Cir. 2004); *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147 (9th Cir. 2009); *Cortez v. Trans Union, LLC*, 617 F.3d 688 (3d Cir. 2010); *Hinkle v. Midland Credit Mgmt.*, 827 F.3d 1295 (11th Cir. 2016).

³ 15 U.S.C. § 1681e(b).

⁴ 15 U.S.C. § 1681i(a)(1)(A).

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