

The Big Four Litigation Targets Remain “Hot”

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Written by the Employment Screening Litigation Tracking Group (ESLTG)

The late, great Yogi Berra once said “this is like déjà vu all over again.” You may be thinking: How does this quote reflect the background screening industry? Unfortunately cases tracked by the Employment Screening Litigation Tracking Group (ESLTG) since October 2015 confirm that the big targets over the last few years remains “red hot.”

- Disclosure and Authorization and Adverse Actions Suits Continue to Surge. A whopping **67%** of employer-focused cases have accused employers of violating either disclosure and authorization or adverse action requirements.
- Strict Procedures/Contemporaneous Notice Suits Are Hitting CRAs: 50% of the CRA-only cases have asserted violations of Section 613 of the FCRA, accusing the CRA of providing public record information for employment purposes without maintaining strict procedures to ensure reported information is complete and up-to-date or sending a contemporaneous notice to the consumer.
- Reasonable Procedures Cases Also Remain Popular. 37.5% of CRA-only cases have alleged violations of Section 607 of the FCRA, the section which requires CRAs to follow reasonable procedures to ensure the maximum possible accuracy of information reported.

Other News:

- Big settlements! Large settlements continue to occur. One national home improvement chain recently settled a case for over \$20 million alleging principally that the company has used disclosure and authorization paperwork that contained a release of liability. Over 450,000 people may be involved in the class. Settlement proceeds will be distributed in the form of a \$50 gift card or a \$35 check.
- Who Cares About Spokeo Anyway? One federal district court in Illinois recently concluded that a consumer could bring an FCRA case even if the consumer lacked actual damages because the plaintiff still had an interest in protecting his “privacy” and “economic self-determination.” This may be a sign that, even if *Spokeo* comes out favorably, Plaintiff’s attorneys may assert “work-arounds” to continue the surge of highly technical FCRA cases.
- California Certification Cases. At least one attorney working with CRAs has reported that California Plaintiff’s attorneys are beginning to argue that a CRA violates California’s background screening laws by failing to get California-specific certifications related to disclosures and authorizations. Demand letters are beginning to surface on this issue.

If you are interested in being one of the first to know about litigation filed that impacts our industry, and would like to be part of the team that tracks these cases, contact [Chad Ascar](#) or [Melissa Foiles](#).