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## \$4B Litigation Over Credit Reports Gets The Boot

By **Jocelyn Allison**

*Law360, New York (July 08, 2009)* -- A federal judge has dismissed three putative class actions seeking a total of more than \$4 billion over allegations that the top U.S. consumer credit reporting agencies hurt credit scores for Capital One cardholders by failing to publish credit limits in their credit reports.

Judge G. Ross Anderson Jr. of the U.S. District Court for the District of South Carolina on June 30 granted summary judgment to the defendants in three separate cases against Experian Information Solutions Inc., Equifax Information Services LLC and TransUnion LLC.

Plaintiff William A. Harris Sr. argued that the credit reporting agencies violated the Fair Credit Reporting Act by failing to publish credit limits for individual Capital One accounts. He sought more than \$4 billion in damages for class members in South Carolina, North Carolina, Virginia, West Virginia and Maryland.

Capital One refused to provide the credit limit information, though it provides the data now. Harris argued the companies' initial failure to obtain the information made the credit reports inaccurate and brought down the credit scores for Capital One cardholders.

Without credit limit data, the credit reporting agencies would instead supply a person's high balance, even if their actual limit was below or above the highest balance he or she had racked up on the card, according to the ruling.

Many credit scoring models use the high balance to calculate a person's credit score when the credit limit is not available, which may cause the credit score to go up, down or stay the same depending on a number of factors, the opinion said.

Judge Anderson found that the omission of credit limits did not render the reports inaccurate, and, even if they did, the companies followed reasonable procedures to make sure the reports were as accurate as possible.

“A credit report is not 'inaccurate' simply because it does not include all relevant information about a consumer,” the judge said. “Indeed, plaintiff cites no authority for the proposition that a credit report is 'inaccurate' under the FCRA simply because it omits information that some might deem relevant.”

He also noted that the reports always distinguished between a high balance and credit limit, which would render the credit reports correct, and that the credit reporting agencies couldn't be expected to force Capital One to supply the credit limit data when credit reporting is voluntary.

“Had it wanted to, Congress could have created an exception to this voluntary system by requiring data furnishers like Capital One to report to [consumer reporting agencies] particular items of credit information, such as credit limits,” Judge Anderson said.

“That Congress had this tool at its disposal but did not use it demonstrates that it did not intend to depart from the voluntary norm and require data furnishers to provide credit limit information, let alone require [consumer reporting agencies] to somehow force furnishers to provide credit information that furnishers had no legal obligation to provide,” he said.

Judge Anderson further noted that many credit scores based on reports without credit limits had actually increased, and that Harris had not claimed that his own score had suffered.

The plaintiff also did not identify anyone with a lower credit score who was denied credit or forced to pay unfavorable rates because of Capital One's refusal to supply credit limits, the judge said.

Billy Wilkins, an attorney for Experian who took the lead in arguing for the defendants, welcomed the ruling, noting that much was at stake for the three defendants considering the 4 million class members involved.

“This would have had a huge effect on them if the decision had gone the other way, but bear in mind, too, that this was only the Fourth Circuit,” said Wilkins, former chief judge for the U.S. Court of Appeals for the Fourth Circuit and a partner at Nexsen Pruet LLC.

“If we had lost here in the Fourth Circuit, it would be a crippling blow, but it would be the first of many lawsuits that would have been brought in other circuits,” he said.

A spokesman for TransUnion said the court's ruling reinforced the company's belief that its procedures were appropriate and did not harm consumers.

An Equifax spokesman declined to comment, and an attorney for the plaintiffs could not be reached.

The plaintiffs are represented by Motley Rice LLC, Johnson Smith, Hibbard & Wildman Law Firm LLP, Julie L. Fuchs Law Firm and Mullen Law Firm.

Experian is represented by Nexsen Pruet LLC, Jones Day and Beattie B. Ashmore Law Office.

Equifax is represented by Kilpatrick Stockton LLP and McNair Law Firm.

TransUnion is represented by WilmerHale LLP, Kogan Trichon & Wertheimer PC and Nelson Mullins Riley & Scarborough LLP.

The cases are Harris v. Experian Information Solutions Inc., case number 06-cv-01808; Harris v. Equifax Information Services LLC, case number 06-cv-1810; and Harris v. TransUnion LLC, case number 06-cv-1811, all in the U.S. District Court for the District of South Carolina.