

***FCRA Focus – S01 Episode 03 - A Conversation with Kristi Kelly of Kelly Guzzo*****Host:** Dave Gettings**Guest:** Kristi Kelly**Aired:** July 5, 2022

Welcome to Troutman Pepper's podcast, *FCRA Focus*. This podcast series is designed to educate, inform and hopefully entertain you as well on all things related to the Fair Credit Reporting Act. To stay abreast of these issues and to make sure you don't miss an episode, please subscribe via iTunes, Stitcher, Google Play or wherever you download your podcasts. And now, your host, Dave Gettings.

**[DAVE GETTINGS]**

Welcome to the second edition of the *FCRA Focus* podcast. The podcast dedicated to issues related to the Fair Credit Reporting Act and associated credit reporting. Today we're joined by Kristi Kelly, one of the founders of Kelly Guzzo. Kristi is based in Northern Virginia, but she litigates FCRA cases throughout the country. And Kristi is one of the most recognized names from the plaintiffs' bar with respect to FCRA litigation including FCRA class litigation. She's got multiple jury trials and significant class settlements to her name. And while reserving the right to challenge Kristi's adequacy in any class certification battle, I will say that Kristi is one of the most formidable FCRA class action lawyers that's doing plaintiffs' work in this space. And so, I'll compliment her on this podcast, but not in court. Given her experience in work on the plaintiffs' side of these cases, we thought Kristi would be a perfect interview for the *FCRA Focus* podcast. So, with that, Kristi, welcome and thank you for being here.

**[KRISTI KELLY]**

And thank you, Dave, for having me. I really appreciate the opportunity.

**[DAVE GETTINGS]**

Perfect. Of course. Maybe this will be a little marketing for you, if plaintiffs' counsel market, which I don't really know. So, we'll see. Kristi, just if you would start, tell us a little bit about your practice, you know, the audience is people that listen to an FCRA podcast. So, you've got to assume that they either really like credit reporting or are in this space already. So just give a sense of what your practice entails.

**[KRISTI KELLY]**

Sure. So, I practice exclusively consumer law and it includes a lot of Fair Credit Reporting Act litigation, but I also do some mortgage-related litigation, including how it ties into credit reporting work. A lot of the credit reporting cases we do are sometimes class actions as well because we identify what we perceive to be problems in the marketplace that affects consumers and so our objective is to fix those problems on a larger scale than for our individual clients. So, we do all kinds of FCRA litigation, individual cases, problem solving, baby cases, to large class actions against various entities – big three credit bureaus, background screening companies, tenant screening companies, some of the sub-prime consumer reporting agencies as well.

**[DAVE GETTINGS]**

Sort of what I guessed based on my experience with you. So, we're going to ask you a few questions about your practice, try to get a little insight into how you operate, but we don't want to get the secret sauce if it's something you don't want to give so let's come up with a safe word about whether we've gone too far in a question. What do you want to say where it says Dave, pause, we're not going to answer that question?

**[KRISTI KELLY]**

You know, I'm pretty open as you know of the way I see it as being a plaintiffs' lawyer. We come into court and we show our cards and we, you know, there's not much that I'm not willing to disclose absent, of course, confidential settlement amounts and things that I'm legally prohibited from disclosing. So.

**[DAVE GETTINGS]**

Okay, I promise we will not ask you confidential settlement amounts. Alright. So, first question, how did you get into consumer financial services? Is it something you always wanted to do, or did you just sort of stumble your way into it?

**[KRISTI KELLY]**

So, I don't consider myself a consumer financial services lawyer. I'm a consumer protection lawyer, right? And so I represent the little guy against big companies and so I started at legal aid representing, you know, tenants who were being evicted by landlords and trying to help them secure their housing and, as I learned about other problems consumers had, I learned a lot more about consumer law and how important it is to advocate and educate consumers of their rights because financial problems can really have a detrimental impact on consumers. And then part of that segued into credit reporting. If there are problems with a consumer's credit report, it could prevent them from obtaining housing, obtaining employment, obtaining credit to buy basic necessities and so it is a very important aspect of many people's lives who may not have wealthy parents or grandparents and need credit or need jobs to survive. So.

**[DAVE GETTINGS]**

So, you mentioned in your answer – you mentioned both mortgage, you mentioned tenant screening at one point – do you foresee that there's a particular industry in credit reporting, whether it's tenant screening, mortgage, that's going to be sort of hot for the next year that's the more attractive industry that plaintiffs' counsel are going to focus on?

**[KRISTI KELLY]**

I do. I think the tenant screening background checks have been a much hotter topic with this administration and because of the issues surrounding certain public policy issues about evictions preventing tenants from getting housing and being pushed from some reforms on obtaining housing and the barriers to housing and the more research and studies that have been done about the issues that tenants face when they're trying to obtain housing. I think a lot of tenant screening companies with the CFPB leadership that is in place will have a lot more scrutiny because of how a lot of them operate, particularly with eviction reporting and public record, including criminal record reporting. The big eviction reporting issue I think that is going to come up is that a lot of tenant screening companies just report whether there was

ever an eviction action filed. And they don't always report the outcome of that action and, you know, they always say, "Oh, well, our clients don't care. It doesn't matter. Just the fact that an eviction action was filed, you've got the scarlet E for eviction, you know, you're no good." And I think that's a real problem and I don't think that complies with the language in the Fair Credit Reporting Act because it's incomplete information at best and misleading and inaccurate at worst. And so, I think that's going to be something that has a lot more scrutiny coming, you know, with the way that the climate is right now, and I think those cases are good cases and I would definitely take them.

**[DAVE GETTINGS]**

[laughs] Yeah, we've litigated a couple with you on those.

**[KRISTI KELLY]**

Right.

**[DAVE GETTINGS]**

So, you didn't choose a safe word so I'm going to ask you this question. So, you mentioned government regulators. What's your sense of how closely the plaintiffs' bar actually works with government regulators or gives insight or coordinates with? If that's a fair question, let me know.

**[KRISTI KELLY]**

Well, I think as someone in the plaintiffs' bar you want to improve the marketplace. And being realistic, there are some things that you can't change because you are a plaintiffs' lawyer and you're not a government regulator, you have to deal with arbitration, you know, certain statutes or laws that may not be enforceable from a private plaintiff perspective. But government regulators have a lot more sway and power and tools in their arsenal. Whenever I'm asked for my opinion or information, I am happy to help improve the marketplace and provide information to the extent it would not violate any confidentiality orders or be to the detriment of many of my clients, or contrary to, like I said, a court order or something like that. Like, I've never provided documents or anything like that. I usually get asked my opinion on something or like hot topics that they think or things that I've seen that I am unable to do something about because of, you know, arbitration or other things like that.

**[DAVE GETTINGS]**

I take that to mean there's some coordination and I also say if the CFPB reaches out to me, I'm happy to give them insight into how to improve the marketplace although it probably will be different than your suggestions as to how to improve the marketplace.

**[KRISTI KELLY]**

Yeah. It's total one way. There's no coordination. It's a one-way street, right? I get nothing in return if I ever give anything and, like I said, it's just observations or opinions. It's nothing proprietary. It's just my sense of things from seeing consumer reports or talking to consumers and sometimes it's my angst at being unable to help somebody or resolve something because of, like I said, arbitration provisions or how something is drafted, etc.

**[DAVE GETTINGS]**

Right, right. So, as a defense counsel, we always sit back and say, “Man, plaintiffs’ counsel have it really easy sometimes, because we always have to update clients and write long reports and if we could just spend all that time thinking about our case and strategizing about our case it would make a difference.” So, that’s probably jaded but what is your most frustrating part about being a plaintiffs’ counsel in this space and why is it frustrating for you?

**[KRISTI KELLY]**

I wouldn’t say I’m ever frustrated being plaintiffs’ counsel, right? We get to pick our clients. I consider myself very lucky to be able to do what I do. With that being said, you know, the perfect case just doesn’t stumble in your door wrapped up in a bow as a perfect case and so you have to go through a lot of like, you know, kiss a lot of frogs to find the prince, right?

**[DAVE GETTINGS]**

[laughing]

**[KRISTI KELLY]**

And so, you deal with a lot of consumers who have problems and who have needs where there may not be a remedy that is obvious or something that you can do to help them in a way that will make the difference that they need. And so, you know, my office does a lot of pro bono work because we’re pretty sympathetic and my legal aid background, you know, I understand that if we don’t step up and do something nobody will and the problems that consumers can face if you don’t address their issues, but that being said, when you do find good FCRA cases, and it is very competitive to get a good FCRA case, you know, it’s really important to understand your client’s expectations and make sure that you feel like you can meet them because sometimes there are people who have expectations that just are not in line with what I perceive to be the value of their case and so that can be really difficult. The other thing that can be difficult is that a lot of problems with credit reporting are immediate and sometimes the damage has already been done and there’s not something you can do to really undo that damage. Or – and so you have to really work with your client to help them understand what you can do with FCRA and help them understand the process because it does take time. The other thing that I will say, too, it’s really difficult is that people want to stop the information from ever, you know, occurring on their report again and they won’t stop until they find like the, you know, what is it? Patient zero who gave the information, you know, and in the age of the internet it’s very difficult to find where the information actually came from. It may not have been like, the source on a disclosure or even if it was, you know, can you stop it from being out there again. And, you know, there’s really just no guarantee and so a lot of times you can’t always meet the goals of your clients and just helping them understand that and work through that process, you know, is something that all plaintiffs’ lawyers need to do.

**[DAVE GETTINGS]**

So, you said it was competitive to get a good FCRA case. Do you find that plaintiffs shop to different plaintiffs’ firms? Or what do you mean by competitive?

**[KRISTI KELLY]**

I mean, you mentioned it earlier about advertising. You know, there are a lot of firms that advertise, you know, like SEO, Google ads, all of that stuff, for FCRA cases. My firm, we're not very good at that [laughs] and most of our cases that we bring, they don't actually come, you know, with that particular problem. They come with some other problem and when you assess their situation you realize it's really an FCRA type problem. But there are a lot of law firms that heavily advertise and spend a lot of resources marketing for Fair Credit Reporting Act cases and it is becoming a bigger and bigger thing for plaintiffs' lawyers that – it is just very competitive to market and get a good mixed file or whatever type of FCRA case that you think that is meritorious.

**[DAVE GETTINGS]**

Yeah. Have you noticed any increase in FCRA filings – or, I guess I should say FCRA plaintiffs' firms with the TCPA being sort of gutted by the Supreme Court? Have you noticed people moving over from TCPA to FCRA?

**[KRISTI KELLY]**

Yeah. There are a lot more people that are trying to get into the Fair Credit Reporting Act than there used to be, and I don't know where they come from or what their backgrounds are, but we go to conferences and speak at different sessions and even just being asked to be local counsel on different cases. There's just people that, in what used to be a much smaller community, there's a lot more people in the community or trying to become a part of the community and, you know, it's a challenge, you always want to share information and be a good community member, but it could be problematic because there are people who are making bad caselaw and I'm sure you guys are super happy about that.

**[DAVE GETTINGS]**

We are.

**[KRISTI KELLY]**

But, or maybe it's just you guys that are making the great caselaw and the others don't commit. You always want to make sure that you're always thinking first of your client and also the greater good. So.

**[DAVE GETTINGS]**

Yeah. Makes sense. I always know what the plaintiffs' pressure points are. You always try to serve discovery early. You try to get us in a deposition. Try to look for a bunch of documents. And we always sort of wonder what are the plaintiff pressure points. In terms of what do you guys not like doing? So, what do you not like doing? Is it – if a defendant is just briefing a bunch of motions that take time? What is a pressure point for plaintiffs' counsel?

**[KRISTI KELLY]**

A couple things. So, not necessarily a pressure point, but I never understand why sometimes things have to be so adversarial. Right? You know, a lot of times you deal with a new lawyer representing an entity maybe you've never sued or haven't sued much and they just want to

go out and have like a knife fight, right? And all you want to do is I want to make my client happy. I want to solve their problem and to me, both lawyers should work together to try to figure out what both their clients want and need and try to find a way to come to a resolution. And so, I'm not scared of discovery. Like, I usually have write-ups and supporting documents that I will readily provide to my opposing counsel so that they can convince their client to pay my client money. And so, I think in that way you want to work together and so sometimes I just don't like the adversarial approach and sometimes when it is so adversarial it gets me wanting to litigate and push the case if you know, you know, you have strong facts. And so, it doesn't really benefit anybody, right? 'Cause maybe my client wants an earlier resolution. You know you don't want to get your own personal feelings involved. That being said, one thing that I do, just drives me crazy, when I have a great case and defendant's counsel offers my client like, a great settlement and, you know, there's nothing I can do to tell my client not to take it. You know, I think it's a really selfless thing and not a self-interested thing that those defense counsel do and I know, you know, you guys do that to me. It, you know, especially in the class context, right, because how can you tell your client, you know, you can advise your client of all these different things but it's a strategic move that I recognize and it kind of, you know, makes me like roll my eyes because it's like you're being out maneuvered in some sense in that regard. But, you know, it's a hat tip to competent defense counsel who recognize good cases. You know, a lot of my individual cases, my best cases are settled right out the gate and then the ones that we end up pushing are my worst cases where I'm like, "Ah!" You know? That's why I think it's good that companies hire like, defense counsel that can recognize these things and get rid of cases that could be problematic for them.

**[DAVE GETTINGS]**

It's probably a separate conversation, but it's interesting you say big individual settlements 'cause I do always wonder in those situations whether, were defendants offered just life-changing money to a plaintiff? More than the plaintiff's ever gonna get as the named representative. Or, you know, just a significant amount of money and they turn it down. And we always sort of hear, "Well, they just want to see the process change" or, "They just want to make a difference," but it does seem sort of shocking to us sometimes when they turn down life-changing money. But I guess it does happen. I guess you get some clients that say, "I don't want the money, I just want to litigate," or, "I want to change something," right?

**[KRISTI KELLY]**

Yeah, I mean there are people who feel like they've been wronged by the system and want to change the system because they don't want that to happen to others. You know, we have clients who've been accused of being a sex offender and they're not and they get denied housing and their wife looks at them funny, like, oh, are you...you know? What do I not know? And they just don't want that to happen to anybody else, right? And so, they're willing to press forward and make a change and work for the greater good and I think that's commendable, but there's some people who just aren't in a position to do that. And, you know, your client is who your client is and you take them as they are and you have to do your job. So.

**[DAVE GETTINGS]**

Yeah. So, a few more questions to wrap it up. Where do you see the litigation trends going over the next year or so? I know sort of anecdotally we've seen a few more cases regarding

social security verification products but, you know, if you had sort of a top two or three subject areas you see FCRA litigation going, where do you see it going?

**[KRISTI KELLY]**

I think one issue that we're seeing a lot more of is trying to expand the use of arbitration provisions for liability waivers in, like tenant screening context or, you know, they're prohibited in an employment context, but in like, tenant screening context and the arbitration provision, you know, and credit monitoring products are now trying, are being used to try to prevent litigation of individual or class Fair Credit Reporting Act cases in courts. And so, that is like, one area that we are seeing more of. The other thing is the standing *Ramirez* issues, you know, it's the new *Spokeo*, where you're trying to figure out what claims will be successful in front of the courts in terms of standing. I'm seeing a lot of the collateral attack issues because of some different circuit court opinions not here in the Fourth Circuit but in other places, so we're hearing a lot about those types of defenses. And then I guess the one thing kind of in line with the verification is I'm seeing a lot of cases dealing with people who don't have social security numbers who have credit files and the problems associated with that. And so that's something that my law firm is looking a lot into. And I think those are really interesting issues.

**[DAVE GETTINGS]**

So, what's the potential claim there? If someone doesn't have a social security number? Is it a EB claim? Is it something different?

**[KRISTI KELLY]**

Oh, I think there's a lot of different things that you could assert depending on the fact pattern. You know, those types of cases are prone to mixing, having mixed files because of the matching procedures that are used. There is also, I mean, I think you have like EB claims for sure and I think there could even be some other like, state court like equivalent type statutes or, but I do think it's probably mostly EB when all is said and done. But it's interesting because of the prevalence of the types of cases we're seeing for people without socials but who do have credit files and tax I.D. numbers. So.

**[DAVE GETTINGS]**

Interesting. So, Kristi, last question. How often do you get out to the Kelly Guzzo Hawaii office? And has it been the best thing you've done in your practice in the last 10 years?

**[KRISTI KELLY]**

Well, with three little kids and COVID the answer is not gonna be surprising. I haven't been out there – I've been out there once and so I was out there more when my brother went to college out there. Which was many years ago. So, hopefully I'll be going there more soon but maybe I will file a bunch of Hawaii cases so I can get out there. It doesn't look promising any time soon.

**[DAVE GETTINGS]**

We both need to a better job of getting the clients in the Florida Keys and Hawaii, so we'll work on that.

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**[KRISTI KELLY]**

Yeah, just refer them all to me. You know. You're conflicted out. Just send me all the Hawaii people. I'll take care of it.

**[DAVE GETTINGS]**

Thanks, Kristi. As always, appreciate your time and appreciate you being a guest.

**[KRISTI KELLY]**

Thanks for having me, Dave. I really appreciate it.

**[DAVE GETTINGS]**

Alright. Take care.

**[KRISTI KELLY]**

Okay.

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