
CONSUMER FINANCE PODCAST: A SNEAK PEEK IN THE CONSUMER FINANCIAL SERVICES YEAR IN REVIEW AND A LOOK AHEAD**HOST: CHRIS WILLIS****GUEST: DAVID ANTHONY****POSTED: JANUARY 13, 2023****Chris Willis:**

Welcome to the *Consumer Finance* Podcast. I'm Chris Willis, the co-leader of Troutman Pepper's Consumer Financial Services Regulatory Group. And today we're going to be giving you a preview of our Consumer Financial Services Year in Review and a Look Ahead Publication that's going to be coming out later in January. Before we jump into that topic, let me remind you to visit and subscribe to our blog, consumerfinancialserviceslawmonitor.com, where you'll see all of our daily updates about the world of consumer finance. And check out our other podcasts. We have lots of them. We have the [FCRA Focus](#), all about credit reporting, [The Crypto Exchange](#) about all things crypto, and [Unauthorized Access](#), which is our privacy and data security podcast. They're available on all popular podcast platforms. And if you like this podcast, let us know. Leave us a review on your podcast platform of choice and let us know how we're doing.

The Troutman Pepper Consumer Financial Services Group's Year in Review and a Look Ahead Publication is something that's new to me because I'm still relatively new to the firm. To help me tell you all about it, I've brought on board for today's episode, my good friend, long-term friend, and long-term Troutman Pepper Consumer Financial Services partner, David Anthony. David, thanks for being on the podcast today.

David Anthony:

In fact, glad to be here, Chris. Look forward to it.

Chris Willis:

We've just finished putting together as a group this Year in Review and a Look Ahead Publication, and it's really a comprehensive look at a lot of areas. It has 17 chapters, covering 17 different areas of consumer financial services, law, and regulation. But David, give the audience some background. This is, I think the seventh year in which our consumer financial services group has done this publication. Why did we get started doing this? Why do we do it?

David Anthony:

I think that we do it for several reasons. Going back in time, I think that it allowed us to put our heads together and remind ourselves what happened last year and what's going to happen next year as part of our ordinary planning. We have, for a long time put together blog posts, had webinars and other written materials in the advisors that we've had. And we thought that putting everything together in a single place would be of significant help to clients, as well, I think, to show the breadth of the work that we do.

One of the things that I've always found unusual and different about Troutman is that the breadth of what we do is deeper in more topics than perhaps some others. And so, as we have grown in our expertise and depth, we've added topics. I can't remember how many we had in the first year, but I know it wasn't 17. And we keep adding as our depth keeps on growing. And so, clients, if they're not interested in all of the sections, chances are there's a section or two

that would be germane to them. It's been well received, and clients have raved about it, so we keep on doing it.

Chris Willis:

And David, as I said, I'm new to the publication since I only joined the firm a little bit less than a year ago. But one of the things that really struck me on taking a look at the work that we've put together this year is, it's really a great concise summary organized by topical area, like credit reporting or Fair Lending or FinTech or debt collection or auto finance of not only everything that's happened over the past year that we thought was noteworthy but also a look ahead. And that's the thing that I want to emphasize to the audience too.

Reading this Year in Review and a Look Ahead Publication isn't just about reminiscing about what we all lived together through for the last year. It's also about understanding what we think is happening in the legal environment for our industry in a way that informs what we're going to see in the coming year. And in that vein, I'd really like to hear just a little bit of commentary from you about what you expect for the consumer financial services legal environment for 2023.

David Anthony:

I'm a litigator first and a regulatory enforcement lawyer second. But from a litigation perspective, I think some themes that we've seen in 2022, I expect to continue in 2023. So, just clicking through a couple of those, courts continue to struggle with the interpretation of the Spokeo and Ramirez cases, and what standing means within the cross-section of all of these federal statutory claims, as well as what do they mean for purposes of damages, and what do they mean for purposes of class actions? For instance, what's the interplay of standing with class members? And we're beginning to see more of that as well with the States.

And in addition to that, class actions generally remain on the rise. Looking back 15, 20 years, it would be my view that the plaintiff's bar is becoming more and more sophisticated. And so, I think the challenges today and tomorrow for clients are different. They're constantly evolving.

I think we will continue to see the intersection of privacy with a whole host of these claims that we regularly deal with. And so, whether that's AI or it's machine learning or it's technology or for instance, it's the accuracy of credit reporting while at the same time their challenges to the access to public data records that, for privacy reasons, are being restricted. All of that to me creates continuing conundrums that, I think, will play out in 2023.

Chris Willis:

From my standpoint, in terms of watching the behavior of the various regulatory agencies that we deal with, we have a whole lot to look forward to this year. And I don't mean that necessarily in a positive way, in all respects, but there's a lot going to be going on. We're likely to get yet another Supreme Court decision about the constitutionality of the CFPB, coming from the Fifth Circuit decision that's currently with a cert petition pending. We also have the CFPB having just released a very aggressive rulemaking agenda for the year that includes some rulemakings we already knew about, like the 1071 Small Business Data Collection rule and the 1033 Open Banking rulemaking. But in addition, some brand-new ones that we don't know much about yet, like some dealing with non-bank registration, as well as potentially a rulemaking under the Fair Credit Reporting Act.

And of course, both the Federal Trade Commission and the CFPB have shown themselves to be very aggressive in enforcement proceedings. And we expect that to continue unabated in the

new year. And the Department of Justice we know is working on tons and tons of redlining cases. So, mortgage redlining, I think, is going to be a major feature of 2023 in terms of regulatory enforcement. And of course, we shouldn't forget the states, the State Attorneys General and the State Departments of Financial Services continue to be incredibly active and focused in our industry, both in terms of rulemaking and enforcement. And so, I think this year, 2023, is going to give us even more of what we saw last year in terms of regulatory activity. And that's something that the industry needs to be prepared for, both with respect to specific issues and just generally as an environmental issue.

David Anthony:

And I'd like to add one thing to that, because I do think, again, from another intersection perspective, the FTC, the CFPB, and others, and the Federal system have been aggressive in filling space and in saying what they believe the law is. I do believe that it's a matter of time, whether that's 2023 or 2024, that Supreme Court will tackle Chevron deference and continue to chip away, I believe, at the degree of authority for these Federal agencies to do these kinds of things. And I think there will be ripple effect. Whether that gets shifted to the state attorneys generals or private plaintiff's counsel attempt to make similar kinds of arguments, there will be a lot of disruption in terms of clarity to folks in this space in terms of what's permissible, what's not permissible, what are they going to do, what's going to be challenged. In my view, it's a lot more unclear and unsettled than has been the case in the past.

Chris Willis:

Well, and that's a good point, David. And the thing is, one of the phenomena of the CFPB today is far more contested, litigated enforcement actions than we've ever seen in the Bureau's history before, with large parties that are really defending themselves on some of the aggressive legal issues that the Bureau has taken up in those cases. And so, every one of those cases is an opportunity either for the CFPB to win big or lose big, and maybe even get to the Supreme Court and have its view of what UDAP means, or what some of the other federal consumer financial laws really might mean. And there's plenty of opportunities working their way through the system now, certainly as compared to anything that we saw in the past where we really only saw one really big, litigated case that went to the Supreme Court. But that was really the only one.

David Anthony:

I think as long as we have this court, the way that it's comprised, and this CFPB and FTC, the way they are acting, it's inevitable that there's going to be multiple collisions that go along with that. And it could be an industry changing in the sense that it could become much more commonplace than is the case, maybe, five years ago.

Chris Willis:

Well, I think the fasten seatbelt sign is definitely on for this year because of both expected and unexpected turbulence, David. And so, I really wanted to thank you for being on the podcast today. Let me remind our listeners that this Year in Review and a Look Ahead Publication that we've been talking about this entire episode is going to come out around January the 31st. We're just putting the finishing touches on it now. When it does come out, you'll get an alert on it if you're subscribed to our email list, and you'll also see a post with a link to it on our [consumerfinancialserviceslawmonitor.com](https://www.consumerfinancialserviceslawmonitor.com) blog.

David, thanks again, and thanks to our audience for listening to today's episode. Again, don't forget to visit our blog, consumerfinancialserviceslawmonitor.com, and hit that subscribe button, so that you can get our Year in Review and a Look Ahead Publication, as well as all the other stuff we post on there every day. And while you're at it, go visit us at troutman.com and add yourself to our Consumer Financial Services email list, so you'll get copies of our client alerts like this Year in Review Publication and announcements about our Industry Only webinars. And of course, stay tuned for a great new episode of this podcast on your favorite podcast platform every Thursday. Thank you all for listening.

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