

FCRA Focus — Suluki Secrets: Behind the Scenes of Reasonable Investigations**Host: Dave Gettings****Guests: Brooke Conkle and Mandi Blackmon****Date Aired: 7/30/2025****Dave Gettings:**

Hey, everybody. Welcome to another edition of [FCRA Focus](#), the podcast that discusses all things credit reporting. As always, I am your co-host, Dave Gettings. Today, we're going to talk about a topic that is very close to my heart. I never thought I would say this topic is very close to my heart, but a furnisher's reasonable investigation under 1681s-2(b). I know it's kind of lame for this to be a topic that's close to my heart, but when you spend as much time reviewing investigation files as we do, you get strangely connected to them, and strangely connected to IP addresses, and whether the chip reader was used for the transaction, and all sorts of interesting s-2(b) issues.

Specifically, today, we're going to talk about the Second Circuit's decision in *Suluki*, which confirms what we've already known that it is proper for a court to grant summary judgment to a furnisher on a reasonable investigation claim, despite the arguments that plaintiff's bar typically makes. Joining me today are two attorneys who also spend an inordinate amount of time pondering furnisher investigation issues. Brooke Conkle has been with Troutman Pepper Locke for nearly a decade and is the co-host of [Moving the Metal](#), a podcast that focuses on automotive finance. If you know Brooke, she looks like someone that would host a podcast that involves the phrase, "*Moving the Metal*."

Then, Mandi Blackmon is also with us today. She has been practicing for longer than she would probably like to say and has reviewed more ACDVs and identity theft investigations than she probably ever thought possible. So, Mandi, Brooke welcome to the show.

Mandi Blackmon:

Thanks, Dave.

Brooke Conkle:

Thanks, Dave.

Dave Gettings:

Brooke, did you ever think you'd host a podcast called *Moving the Metal*?

Brooke Conkle:

It actually was on my list of goals that I had to write when I was as senior in high school.

Dave Gettings:

Are you being serious about that, or are you being sarcastic?

Brooke Conkle:

I am being sarcastic. My very metal sort of personality would suggest, as you mentioned, that I would host a podcast called *Moving the Metal*, yes.

Dave Gettings:

So, Mandi, on the spot, if you were to host a podcast, whether or not that anything to do with consumer financial services, what would it be?

Mandi Blackmon:

All into true crime. It'd probably be true crime related.

Dave Gettings:

Okay. There's certainly not enough true crime podcasts out there, so –

Mandi Blackmon:

Never enough.

Dave Gettings:

You're coming into a saturated market. See, I put you on the spot on that. This is not entirely scripted. So, today, we're going to talk about *Suluki*, which was a great Second Circuit decision when it came out only a few weeks ago on a furnisher's obligation to conduct a reasonable investigation. So, Mandi, why don't you help level set and just give us the background on *Suluki* so we know where we're coming from.

Mandi Blackmon:

Sure. Thanks, Dave. This case involves allegations of identity theft, specifically allegations of a mother stealing her daughter's identity. So, just going through the background a bit, which is important here for the investigation that we'll discuss later. Plaintiff alleged that her mother opened several credit cards in her name without her authorization, including one card with the defendant. She claimed that at the advice of her mother, she began opening credit card accounts in 2014 in an effort to build her credit. During this time, her mother helped her complete the credit card applications and also helped her pay off the cards.

In November of 2017, an individual opened a credit card with defendant using plaintiff's information, including her name, date of birth, and Social Security number. The individual opening the card included the address of plaintiff's childhood home. For the next year and a

half, the card was used in Brooklyn near the plaintiff's residence, and regular payments were made on the account from an account plaintiff shared with her mother.

Around the same time frame, plaintiff's mother helped plaintiff's sister open a credit card also with the defendant. In July of 2019, plaintiff applied to rent an apartment and her application was rejected. This triggered her to review her credit report, and she learned that her mother had opened, and maxed out several credit cards in her name.

Dave Gettings:

So, Mandi, just to stop you for a second. So, you've got a backstory of the plaintiff having a history of being engaged in credit accounts involving her mother, is that right?

Mandi Blackmon:

That's correct. After she was denied for this apartment, she began looking at her credit and saw that her mother had opened these cards and maxed them out. She reported this to the defendant and they closed the account at issue, and requested that the plaintiff provide them with a police report to support her claim. She then visited a local precinct to obtain that police report, but after some back and forth about the necessary paperwork, she decided not to get a police report. Even without that police report, in light of the plaintiff's allegations, the defendant reached out to the plaintiff's mother, who advised that the account was opened by both her and the plaintiff together to aid in the building of plaintiff's credit, and that she was making the payments on the account.

The defendant told the mother the account was now closed and provided the outstanding balance. Shortly thereafter, the defendant sent plaintiff a letter requesting certain information regarding the alleged identity theft, including a form affidavit and requesting that she complete an identity theft report. Plaintiff completed and submitted the affidavit, but not the other information. The affidavit had some conflicting information included, which will come up in the court's decision later.

Dave Gettings:

We'd love to see that reasonable investigation, it's conflicting information on the dispute. Okay, go ahead.

Mandi Blackmon:

You're good. In November 2019 and May 2020, the plaintiff then sends disputes to the major credit bureaus. The disputes were all similar and the defendant investigated each in a similar manner. In doing the dispute investigation, the defendant first reviewed the ACDV, including the dispute code, and any documents accompanying the ACDV, and then it reviewed its internal databases. In this case, it looked at the payment history on the account which showed timely payments, which is not common when you have identity theft, and that there were no disputed charges. The defendant also noted that the phone number on the application had been used to

make payments on the account. The defendant then also reviewed a fraud tab within its system that reflects third-party data predicting fraudulent activity, and this did not indicate fraud.

It then reviewed a red flag tab that looks for similar information between applications to determine if there's any fraud. It showed that the phone number and address on the application were also associated with plaintiff's sister's account, but it did not otherwise flag any suspicious activity. The bank then reviewed information available in third-party databases and confirmed that the social security number, the address, and the phone number on the account were all associated with the plaintiff prior to the account opening. Based on this information, the defendant responded to the ACDVs confirming the reporting was accurate.

Dave Gettings:

So, we see that how this is setting up, Mandi, and it's setting up like we often see in furnisher cases, where the furnisher really did do, in my mind a very reasonable investigation, but there's probably breadcrumbs that the plaintiff can point to as to saying, "Oh, you should have done more, or you should have known something different," right?

Mandi Blackmon:

That's correct.

Dave Gettings:

Okay. So, Brooke, let's get to you now. What did the parties argue when they got to the second circuit?

Brooke Conkle:

Yes, Dave. From the plaintiff's perspective, they really pointed to two key problems with the district court's ruling. First, the plaintiff argued that the district court erred by concluding that the defendant would not have come to a different conclusion had it conducted a reasonable investigation. Plaintiff specifically accused the defendant of what they called a cookie-cutter investigation that did not consider various pieces of information. One of those key pieces of information that plaintiff claimed the defendant did not consider is the affidavit that Mandi just described.

Plaintiff also claimed that there were direct links to her mother in the account information that should have indicated to the defendant that there's a fraud issue here. Plaintiff also pointed to evidence that she said showed that her mother was still actively using the credit card.

Then, secondly, plaintiff argued that all of these facts added up to a willful violation of the FCRA. Now, from the defendant's perspective, the investigation, just as you mentioned, Dave had to be reasonable, but did not have to be perfect. Here, there were still a bunch of open questions about what was going on with this account. Is it fraudulent? Is it not? Plaintiff and her mother provided conflicting statements and it really wasn't clear whether plaintiff's mother opened the

account with plaintiff's permission and involvement, or whether plaintiff's mother opened it without plaintiff's knowledge or consent.

Specifically, we've talked about this affidavit that Plaintiff filled out, and Plaintiff is specifically pointing to this as evidence that the defendant should have considered in her credit disputes, but the affidavit itself was not filled out properly. It didn't contain an identity theft report, it had some key information missing, or that was sort of conflicting with what the plaintiff claimed.

Then, further, the defendant was able to point to purchase details and payment history on the account that suggests this is a 19-year-old woman living in Brooklyn who was using this card account. There are specific purchases with retailers that they're saying, "Hey, this looks like Gen Z." All of these purchases suggest that it's a young woman living in New York. She's using this card. And based on all of these facts, the defendant argued, we looked at all of this information. This is a reasonable investigation. We're not held to perfection. We're just held to being reasonable.

Dave Gettings:

So, we've got at this point in the story what we typically see in a reasonable investigation case that often leads to settlement, right? You've got a plaintiff saying, "When you look at everything from the 60,000-foot view over the course of my investigation, you should have seen X, or Y, and pinpoint little issues. Then, you've got the defendant from a on the ground perspective saying, "Look, every time we did this investigation, we took very succinct steps. We had all this corroborating information. What we did was reasonable." This is typically the point where you end up getting settlements because both sides feel risk.

But in this case, to the defendant's credit, they pushed it through to summary judgment, got summary judgment in their favor, and then, pushed it through to the Second Circuit, and we actually ended up getting a really good Second Circuit decision for defendants, right, Mandi?

Mandi Blackmon:

That's right. The Second Circuit held that no reasonable investigation as required under the FCRA would have yielded a different result. Namely, that plaintiff was not responsible for the account, and thus, summary judgment was appropriate. Making this decision, the court really focused on the defendant's arguments and found that the defendant did review the affidavit at issue, but there was contradictory information there. It did review the direct links between plaintiff and her mother, but that wasn't necessarily suggestive of fraud. Then, it also, just with painstaking detail, highlighted some of the flaws in both the affidavit. Again, the purchase history of plaintiff at places associated with the younger generation.

Dave Gettings:

So, what we've got here, Mandi, in the Second Circuit decision is the idea that a reasonable investigation means just that reasonable, not a perfect investigation, right?

Mandi Blackmon:

That's correct.

Dave Gettings:

So, Brooke, is this consistent with other prior Second Circuit precedent or is this an outlier?

Brooke Conkle:

Dave, I don't think this is an outlier for the Second Circuit. It really builds on prior precedent from the district courts, frankly, rather than the Court of Appeals. The Second Circuit is not necessarily one that we see with a ton of FCRA opinions in the s-(2)b canon. So, this really was kind of a welcome opportunity for the Court of Appeals to weigh in on a thorny FCRA issue and one that's particularly difficult. As we all know, identity theft claims can be some of the toughest for a furnisher defendant to see, because these cases are so fact intensive.

Yet, when I read this decision in the *Suluki* case, what it really reminds me of, frankly, is, Dave, a case that we've talked about a lot from a different court of appeals, and that's the bids decision that came out from the Third Circuit a few years ago.

Dave Gettings:

Love meets the BIDS decision, yeah. Go ahead.

Brooke Conkle:

Yes, the cases are very different, decided on different issues, but they both still harken back to this idea of looking at credit reporting from a totality perspective. We're not pulling out individual data points. We're not looking at what could have been done, not looking at information in isolation, but instead a holistic picture of credit reporting and dispute investigations. We always sort of make this comparison to the art world. We're looking at the entirety of a painting, not a single brush stroke in the upper left-hand corner.

Perfect investigations happen in a perfect world, and as we all know, that's not how we're living. The FCRA is not always as clear as many of us would like, but here, the language explicitly requires a reasonable investigation, and not a perfect one.

Dave Gettings:

Brooke, I will tell you, that's probably one of the most eloquent answers we've ever heard on *FCRA Focus*. In the last five minutes, you said the word "canon", you said the word "harken", and then, you also referred to credit reporting and investigations as a painting. So, really beautiful. Thank you. I wish we had rehearsed that, but it could never have come out as good as you just did it.

Brooke Conkle:

My thesaurus was hard at work, Dave.

Dave Gettings:

Thank you. All right. So, Mandi, going forward, what do you think this decision in *Suluki* means for defendants litigating in the Second Circuit in reasonable investigation claims?

Mandi Blackmon:

Yes. So, this decision doesn't create a bright line rule for the furnishers to follow, but it does provide some helpful guidance for furnishers litigating FCRA claims in this circuit. It highlights the importance of a detailed factual record, including both external and internal, reviewing both external and internal information, and creating that record so that the court can consider all of that and look at the reasonableness rather than perfection.

Dave Gettings:

If I'm litigating in the Second Circuit on an s-2(b) claim, which we do all the time. And if I've got a good record for what I did and examples of looking at, and these are just examples, IP addresses, or payment history, or whether there was a chip card reader, or whether the transactions were consistent with past spending. I think I'm much more likely to take the case to summary judgment now because you've got this really good Second Circuit guidance that says, it doesn't have to be perfect, but as long as it's reasonable, you've got a defensible case. So, I do really think, even though it may not be a bright line rule, it will allow defendants to get more and more aggressive in the Second Circuit. And frankly, nationwide, because you can always cite to the Second Circuit. Brooke, what does it mean for compliance going forward?

Brooke Conkle:

From a compliance perspective, I think we would caution furnishers against thinking of the *Suluki* decision as a silver bullet. What we've been talking about today really is the factual record that the defendant developed during the investigation. The court was very clear that perfection is not the standard, but the defendant was still able to show very specific evidence indicating that it took the plaintiff's allegation seriously, it dug into her dispute, and its investigation was based on thoughtful, common-sense factors.

Those factors show it's not the cookie-cutter type of review that the plaintiff claimed. So, from a compliance perspective, that ability to present this type of very specific evidence, just as we've talked about, is going to be very important for defending against s-2(b) claims.

Dave Gettings:

Well, thank you, Mandi. Thank you, Brooke. Really appreciate your time today, talking about a topic that we all spend a lot of time talking about. I'd like to thank all the listeners for listening to the podcast today. Do not forget to visit our blogs, consumerfinancialserviceslawmonitor.com

and troutmanfinancialservices.com. Please subscribe to our podcast, both [FCRA Focus](#) and the Brooke Conkle podcast, [Moving the Metal](#) at all of your favorite podcasting locations. Thanks for listening, everybody.

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