

FCRA Focus — Resellers in the Middle: Duties, Data, and Defenses Under the FCRA**Host: Dave Gettings****Guests: Cindy Hanson and Noah DiPasquale****Aired: 1/21/26****Dave Gettings (00:05):**

Hey everybody. Welcome to another edition of FCRA Focus, the podcast that discusses all things credit reporting. I'm not ashamed to admit it. Today we're going to discuss one of my passions, reseller litigation under the Fair Credit Reporting Act. I actually think about resellers and how to litigate on behalf of resellers in my spare time. Sometimes when mowing the lawn, I can actually think of a very specific example of having ideas while I was shooting out acorns from the bottom of my mower. And I'm not ashamed to admit it, the heart wants what the heart wants with respect to reseller litigation.

(00:41):

Joining me today are two people that are equally as passionate about resellers, Cindy Hanson and Noah DiPasquale. Both guests are Troutman lawyers with deep reseller experience and deep interest in reseller issues just like I have. And I know from personal experience, Cindy is also a depressed New York Giants fan, just like me.

Cindy Hanson (01:02):

Very depressed.

Dave Gettings (01:03):

We also have that in common. Cindy, maybe when this podcast comes out, we will not be as depressed because they will have the number one draft pick and maybe there'll be changes in the front office. Only time will tell, right?

Cindy Hanson (01:16):

That is correct. I can only hope that the Jets will win a couple games at the end like they typically do so that it will improve the Giants chance.

Dave Gettings (01:25):

Exactly. Cindy and Noah, thank you for joining the show. Noah, are you a depressed sports fan by any stretch?

Noah DiPasquale (01:30):

Not really actually. So we'll just leave it at that, but I'll sympathize with you and your pain.

Dave Gettings (01:35):

Noah, I envy you. I envy you completely.

Noah DiPasquale (01:38):

It's an easier way to live.

Dave Gettings (01:40):

It is an easier way to live. All right. Starting off talking about resellers, I think it's good to give a quick definition and examples just so the listeners who may not be as familiar know what we're talking about. So Noah, can you just give us a quick recap of what is a reseller under the FCRA and a type of example or multiple examples we may see in this space?

Noah DiPasquale (02:02):

Sure. So I think it makes sense to start at the basics here about what the FCRA regulates in terms of consumer reporting agencies to then build to the definition of reseller. The listeners here, I'm sure understand and recognize that the FCRA regulates several different players in the consumer reporting space, including consumer reporting agencies, as well as the furnishers of information to those agencies, and then also the users who are using the reports from the consumer reporting agencies.

(02:30):

And so where resellers fit in is in a definition that's explicitly within the section of the FCRA that defines these players, but a definition that falls underneath the broader definition of consumer reporting agency. So the listeners, I'm sure aren't familiar with the fact that the consumer reporting agency is defined as a person or entity that is assembling or evaluating consumer information. And that broad definition is going to include a wide variety of types of companies, national credit bureaus, specialized consumer reporting agencies, background screeners, and specifically that definition is assembling or evaluating consumer information for the purpose of providing reports for eligibility purposes that are listed in the FCRA.

(03:16):

Now, the reseller definition is separately contained in a provision that is 1681a(u), and it defines it as a type of consumer reporting agency, so with reference back to the broader definition, but a type of CRA that assembles and merges information contained in the database of another consumer reporting agency, that's the first part. And then second, does not maintain its own database of the assembled information from which new reports are generated.

(03:47):

So we're talking about a CRA that's not aggregating and maintaining a file on consumers nationwide from which it's continually creating new reports from its own sources. It's not gathering that from furnishers directly, for instance, on a regular basis and compiling it, but instead sort of on a transactional basis, when a user asks the reseller for information on a particular consumer, they're then going to the database of another CRA and requesting that information to then provide on to resell to the user. And those are really the two prongs there that define what a reseller is.

(04:26):

Now, you also asked for an example. I think a lot of people's minds go to the credit and mortgage industry for these resellers because we do see a lot of resellers that act as they create tri-merge reports by getting reports from all three or sometimes a subset of the three credit bureaus and merging those together often in a mortgage context so that a lender can see a complete profile of the consumer's credit history and their credit standing.

(04:56):

But really the definition, it does not have to be limited to that. And we do see resellers that act in many other industries, including background screening, where they're obtaining criminal information or eviction, rental history information from an originating consumer reporting agency that's maintaining the actual data and file regularly and the reseller's not maintaining their own database. That's sort of the test there.

(05:21):

The other interesting thing about the definition is it mentions assembling emerging information, which is distinct from the assembling and evaluating language used in the broader consumer reporting agency definition, which comes into play in some of the arguments that are raised in litigation regarding the different obligations and duties, which I'm sure we'll discuss further.

Dave Gettings (05:45):

Yeah. Thanks, Noah. So it sounds like based on what you discussed, the key issues are resellers are not maintaining their own database, and for the most part, resellers are really acting as a conduit of information from the underlying CRA to the end user. Is that maybe not technically the definition, but is that sort of a fair approximation?

Noah DiPasquale (06:05):

Yeah, I would definitely say so. Conduit, or I think the language that we often use is intermediary, someone who's just kind of in the middle, for lack of a better word, but they've got this limited and very specific role that the industry requires and relies on that's sort of in the middle between the originating CRA and the end user.

Dave Gettings (06:24):

All right, Cindy. So now that we've got a good baseline understanding, what are the two FCRA sections we typically see with respect to reseller compliance and reseller litigation?

Cindy Hanson (06:36):

So because a reseller is a CRA, the first section of the FCRA that you see resellers being sued under is our old friend 1681e(b). So just like all consumer reporting agencies, resellers are, quote, "required to follow reasonable procedures to assure maximum possible accuracy." So e(b) liability remains and the usual hallmarks of an e(b) case against a reseller remain. The information reported had to have been inaccurate in first instance, and then you go to issues of whether or not the reseller followed reasonable procedures. And I know that's something we'll discuss in a second, but the reasonable procedures issue permeates just about any reseller case.

(07:25):

The second issue that you see in most FCRA litigation, and you will see in reseller litigation, is liability under 1681i for a reinvestigation. However, resellers and more typical CRAs have different obligations under 1681i and a reseller's obligations are far more limited and unique to it because of its status as a reseller as opposed to a typical CRA.

Dave Gettings (07:58):

Yeah. To me, Cindy, 1681i(f), which talks about the limited dispute obligations of a reseller, really does sort of encapsulate what a reseller's obligations are and what a reseller is. And to me, it actually transcends 1681i and 1681e(b). The fact that a reseller doesn't need to conduct its own investigation outside of just seeing if it frankly screwed up in the passing along the information indicates that resellers do have pretty limited roles and that specific construct is something courts need to look at more under e(b). In other words, when you're assessing an e(b) claim against a reseller, the FCRA already tells you that they're not supposed to have a lot of specific knowledge or input in the underlying data. And I think that should be relevant to the e(b) claim. Have you thought through that argument at all?

Cindy Hanson (08:53):

I agree with you, Dave. And I think this is one of the points where the FCRA falls down because as you said, when it comes to a reseller's obligations in the reinvestigation arena, 1681i(f) really does limit what the reseller has to do. All the reseller has to do is first, to the extent there's a dispute, the reseller has to determine, "Hey, was it something on my end that made a mistake? Did I push out the wrong report?" Or something like that.

(09:26):

So if it was a reseller-caused issue, then the reseller has to look into it. But 99.9% of the time, what the consumer is disputing is an accuracy or inaccuracy in the underlying data that the

reseller obtained from the originating CRA. And if that is the case, all the reseller needs to do is to convey the notice of dispute to the underlying CRA. That's it. The reseller has no obligation to do any independent investigation, has no obligation to evaluate the accuracy and completeness of the information. So I agree with your point.

(10:06):

To me, where the FCRA falls down on the e(b) liability of a reseller, there is not a similar limitation on what the reseller is supposed to do in order to have reasonable procedures to assure the maximum possible accuracy. But I do think looking at i, where there was this very limited role that the reseller is going to play in an investigation, which makes sense because they didn't originate or collect any of the underlying information, it makes sense that in an e(b) context, we should really be looking through down to what were the procedures of the reporting CRA since that is the entity who was really going to be looking at those issues. And I know, Noah, I think you were going to speak about what we're seeing in litigation when it's a reseller being hit with the e(b) claim.

Dave Gettings (11:02):

That's a good transition, Cindy. What I was saying was, not that it's explicit in e(b), the reseller sort of standard CRA dichotomy, but the court should, at least in my view, draw an understanding of what a reseller is from both the definition and from 1681i and then apply that in determining what is reasonable procedures for a reseller under 1681 e(b). So Noah, I don't want to steal your thunder, but how have courts looked at generally e(b) claims against resellers recently?

Noah DiPasquale (11:35):

Sure. The first thing to note about the way that courts have looked at this, there's obviously a lot of decisions out there and you can parse them, but they're not going to always be entirely consistent. But I think there's themes and certainly a baseline that we can draw from the way courts have been as to what the winning litigation strategies are and what aren't.

(11:57):

And one thing to note at the beginning is there's kind of this straw man argument that often is the way that the plaintiff's counsel or even some courts might misinterpret an argument by a reseller in litigation as saying that because I'm a reseller, 1681e(b) doesn't apply. And obviously as we've been talking about this, we've discussed how a reseller is a type of consumer reporting agency. And as Cindy noted, 1681e(b) applies to consumer reporting agencies. So courts, if they assume that that's the argument you're making, they're pretty quick to say, "No, it does apply." But there's more nuance here, as you're talking about.

Dave Gettings (12:34):

Just to be clear, not all courts have said that, right? There have been some decisions that have actually said resellers are not subject to e(b) based on the preparation distinction, right?

Noah DiPasquale (12:43):

That's actually true. Yes. There's a case, the Walters case out of Western District of Texas, I believe, and that was even affirmed at the Fifth Circuit in a non-published decision, but that it found that a reseller, in that case, a background screening company reseller, I'm pretty sure, was not subject to e(b) for the report that they simply passed along from the upstream CRA because they hadn't prepared it. So that is an important distinction to make.

(13:08):

But then even moving beyond that and looking at e(b) claims and starting with the presumption that it does apply to the reseller, there's the question of what constitutes reasonable procedures. And that's always a question that has to be answered under e(b). But the fact is that with the different role that resellers play in the industry, so we've been discussing the kind of intermediary role, that is a fact that should be relevant to, and I would argue is very relevant to what constitutes reasonable procedures.

(13:41):

As you noted earlier, there's a difference under 1681i as to what they have to do even when they've been provided notice of a dispute, and that is reflective of the acknowledged limited role, this intermediary role that they play and how that operates in terms of a dispute. And the same thing should be notable or noted in what constitutes reasonable procedures.

(14:04):

So what we see in the case law is first of all, a general rule that's not specific to resellers really, but just a general rule that CRAs often, as a matter of law, are found to act reasonably when they rely on facially accurate information that was reported to them by a source that they don't have any indication is unreliable. That's been affirmed, even affirming summary judgment decisions by the Sixth Circuit, for instance, in Hammoud v. Equifax Information Services and other circuit courts of appeals have affirmed that idea that even without getting to a jury, there are instances where it's just clear as a matter of law that a CRA relied on facially accurate information. They didn't have notice that there was anything wrong with it.

(14:48):

And extrapolating that to the reseller context, it makes that argument even more clear when the reseller is relying, number one, on a source that is itself a consumer reporting agency with its own obligations to assure accuracy. That's one part of the calculus there to see how it would be reasonable to rely on that kind of a source, even above other sources. And then furthermore, the recognition of their role of how they're just getting this information, they're not gathering it directly from the furnishers, they're not evaluating which file to apply it to, but it's a transactional basis, intermediary kind of conduit situation. And so they're even in less of a position then to be able to identify from a facially accurate record that there's an issue there.

(15:38):

And so recognizing the realities of where they are in the industry and the fact that in these situations, the consumer does have a cause of action against the originating CRA as well. I mean, that CRA is regulated by e(b) just as much as the reseller. So it's not even eliminating at all a consumer's ability to rectify the situation. So that's sort of where the case law stands now. There's been some good decisions. For instance, the Baker decision out of the Central District of California, recognizing how that intermediary role of the reseller necessarily affects the reasonableness of their procedures and as a matter of law, can render them reasonable.

Dave Gettings (16:16):

Noah, I think those are all really good points. So from my perspective, the law really should be going to the notion that a reseller follows reasonable procedures by faithfully reporting accurate information or at least presumptively accurate information it receives from the originating CRA. And to hold otherwise, to hold the reseller has some higher duty to pre-investigate or do anything like that, to me really runs contrary to the reseller definition. It's logically inconsistent with the structure of 1681(f) and it's inconsistent with industry expectations.

(17:00):

And so we've been making those arguments in lots of cases, and to do that, we've been highlighting industry standards, we've been using experts and customers to show what the industry expects. And at least from my perspective, it's kind of a long game, but I really do think that's where the law needs to go because otherwise it's just fundamentally unfair to resellers and what resellers actually do. I take it you've been doing similar things in your litigation?

Noah DiPasquale (17:31):

Absolutely. I think you're exactly right. I think that's the recognition, that's the direction the law should take in order to recognize the realities of the industry and also just to make sense of the statutory scheme as a whole. I mean, as you noted, there's the definition that defines CRAs as the originating CRAs, the broadest definition of assembling and evaluating versus the reseller definition, which very clearly just talks about assembling emerging. And then furthermore, as you noted, 1681i, not requiring a reseller, even upon notice of a dispute, to substantively investigate the accuracy if they have faithfully reported what the originating CRA provided to them, just all the more emphasizes why the FCRA as a whole kind of really already does recognize this distinction and the case law should follow the same, I agree. And that's definitely the long game that we've been arguing for and we'll continue to do so.

Dave Gettings (18:27):

So Cindy, last point, we talked about unfair a second ago, we see a lot of cases where either in the same case or in a follow-on case, the reseller is sued with or after the underlying originating CRA with the plaintiff trying to collect from both of them. Have you pushed back on that at times? And what does the case law look like in terms of double recovery or pushing back?

Cindy Hanson (18:53):

So I have pushed back on this and would recommend that people do so. A couple different ways to do it. One is the so called one satisfaction rule, and this is the idea that if a plaintiff is injured, he or she should only receive one recovery for a single indivisible harm and should not be able to recover essentially multiple times for the same harm. So definitely want to, in discovery, request any settlement agreements that the plaintiff may have entered into with the underlying CRA.

(19:34):

We have had success at the district court level in cases in Florida and Kentucky and in Alabama. There are cases going the other way where courts have said, "Well, maybe it's somehow, even though we're dealing with the same information and we're dealing with the same report provided to one end user," somehow the courts still seem to think, "Well, the plaintiff should be able to recover from the two entities independently."

(20:05):

Even if you lose the one satisfaction argument, there's a separate argument of set-off that if you were to go to trial with the plaintiff and there were a verdict, you may actually be able to set off part of the verdict by the first settlement agreement. The standards are slightly different. So do keep pushing for any settlement agreements or any payments, ask about those, make your record on those because you may be able to either eliminate or at least reduce your exposure as a reseller if you are able to have the first settlement basically work to your advantage. So push on those things. They also tend to make plaintiff and plaintiff's counsel uncomfortable, so it's just a good area to continue to push on.

Dave Gettings (20:57):

Yeah. And I think also sometimes when you get the settlement agreement, you find that the release was a little broader than you anticipated?

Cindy Hanson (21:03):

That's absolutely right. Yes. And even if you are aware that there is another settlement agreement, reach out to the party to that settlement agreement or to their counsel. It's probably confidential, but you may be able to get an indication, Dave, of what you just said that, "Hey, am I somehow a beneficiary of a release that might be broader than everybody thought about when they signed the first agreement?" And it might include vendors or entities to whom you sold the information or a variety of other ways that your reseller client could be actually released in that original agreement. So that's a really good point, Dave. And another avenue to push on this, which I do think, even if the court won't give you the amount, I do think a court will let you ask the question, "Hey, let me see the release paragraph. I want to make sure I'm not a party or I'm not a third-party beneficiary to that release paragraph."

Dave Gettings (22:07):

Yeah, all good points, Cindy. Well, we've finished our time and we'd like to thank everyone for listening to the podcast today. And don't forget to visit our blogs, ConsumerFinancialServicesLawMonitor.com and TroutmanFinancialServices.com. And please subscribe to our podcast at all of your favorite podcasting locations. Thanks for listening and appreciate everyone's time.

Copyright, Troutman Pepper Locke LLP. These recorded materials are designed for educational purposes only. This podcast is not legal advice and does not create an attorney-client relationship. The views and opinions expressed in this podcast are solely those of the individual participants. Troutman does not make any representations or warranties, express or implied, regarding the contents of this podcast. Information on previous case results does not guarantee a similar future result. Users of this podcast may save and use the podcast only for personal or other non-commercial, educational purposes. No other use, including, without limitation, reproduction, retransmission or editing of this podcast may be made without the prior written permission of Troutman Pepper Locke. If you have any questions, please contact us at troutman.com.

DISCLAIMER: This transcript was generated using artificial intelligence technology and may contain inaccuracies or errors. The transcript is provided "as is," with no warranty as to the accuracy or reliability. Please listen to the podcast for complete and accurate content. You may [contact us](#) to ask questions or to provide feedback if you believe that something is inaccurately transcribed.