Podcast: *The Consumer Finance Podcast*
Episode: Class Action Surge: What a 25% Spike in Federal Filings Means for Consumer Finance
Host: Chris Willis
Guests: Erin Edwards and Simon Fleischmann
Aired: July 2, 2026

Chris Willis (00:05):
Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice, and today we're going to be talking about recent trends and developments in consumer financial services class actions. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, consumerfinancialserviceslawmonitor.com and troutmanfinancialservices.com. And don't forget about all of our other great podcasts, *FCRA Focus*, *Payments Pros*, *Moving the Metal*, and the *Crypto Exchange*. All of those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your podcast platform of choice and tell us how we're doing. Now, as I said, today we're going to be talking about recent developments in consumer financial services class actions. And joining me to talk about that are two of my partners who are very well qualified to talk about that topic, Simon Fleischmann and Erin Edwards. Erin, Simon, welcome to the podcast and thanks for being here today.

Erin Edwards (01:04):
Thanks, Chris. Very happy to be here.

Simon Fleischmann (01:06):
It's great to be back, Chris.

Chris Willis (01:07):
So Simon, let's just start with setting the table about why we're talking about class actions now, because there's some recent statistics about class actions that show how big of a deal this is for our industry.

Simon Fleischmann (01:20):
That's right. Just a few weeks ago, LexisNexis came out with its annual report on class action litigation and data around these cases, and the numbers are eye-popping. Federal class actions are at a decade high. In 2025, there were 12,000 federal class action filings, which is a 25% jump over 2024. The trend line from 2016 to 2025 is upward, with a notable acceleration just within the past two or three years. And consumer protection cases is the category of class actions that are most active in the courts. In 2025, there were roughly 7,650 consumer protection class actions filed, and that's up more than 40% year over year. And so these are cases that are being filed in large volume and there seems to be no letup in the increase in filings. And the consumer protection cases that are filed are under the statutes that we see and work with all the time, RESPA, the FDCPA, TILA, the FCRA, and various state UDAPs. And the dollars around these cases when they're filed as class cases are equally as stunning, if not

more. From 2023 to 2025, there were over $30 billion in class settlements approved by the courts. And so our consumer financial services clients are correctly focused on these cases because there's a lot of them, they're expensive, and they're very risky.

Chris Willis (03:07):
Well, it's good that we're focused on them too, as counsel to the financial services industry. So thanks for that introduction, Simon. Erin, let me jump over to you. We're going to be talking about the class action landscape for consumer financial services lenders and servicers today and what in-house lawyers should be watching for and planning for in terms of those class actions. Do you mind just giving us an overview of sort of what the landscape looks like right now?

Erin Edwards (03:29):
There are a lot of things we can learn from these recent cases, but four big things that stood out to us that we want to focus on today are standing and injury, early motions to knock out class allegations before we get to the class certification stage, if we do get to the class certification stage, the real evidentiary burdens that courts are putting on both sides, both the plaintiffs and the defendants, and then a real heightened scrutiny over the class definitions. The big takeaway is really going to be if you're in the financial services industry, courts want concrete injury, precise class definitions, and real evidence to support and defend class action.

Chris Willis (04:10):
Okay, that's an important set of developments. Let's talk about the first one that you mentioned, standing and injury. I feel like this has been a source of perpetual discussion within the industry ever since the Ramirez case and its predecessor, Spokeo. So what updates can you give us about how courts are handling standing and injury issues after several years of having those Supreme Court cases on the books now?

Erin Edwards (04:32):
Yeah, you're exactly right. We've known for a while now that bare procedural violations aren't enough to confer standing. But what we're seeing is courts are drawing a sharper line between technical violations and real-world harm. And what that usually comes out to is monetary harm. So, for example, a plaintiff claims that a loan origination lender was steering the borrowers to a certain title company who received a kickback. Yes, that might be unfair competition, that might be unlawful, but how is the plaintiff actually injured through those actions? Just saying, "unfair competition, I didn't have the ability to shop around," that's not going to cut it. Courts are saying that's not enough to meet the real injury standing standard. On the other side, you can show that your fees went up, maybe you did spend more for a certain title company's services than you otherwise would have because the defendant steered you towards that title company, then the courts are going to be more comfortable with deciding, yes, you've satisfied the standing requirements. And the reason why this is important in the class action context is because we all know that the named plaintiff has to have standing in order for the class to be certified.

And courts are taking that very seriously. They are making that a requirement for the class certification stage and saying that that must be analyzed independently before the class can be certified. And we've seen it in various contexts, but one way is through typicality. The plaintiff's claims must be typical of the class members' claims. And if the plaintiffs weren't injured, then the plaintiff wasn't going to be aligned with the other class members. And one other recent

development is the class member standing aspect. So you may know that whether or not each class member needs to have standing has been an open issue for quite a while. The Supreme Court's been invited to weigh in on that question several times, but it declined to do so. The Fourth Circuit recently came out with a decision that somewhat answers that question, however not directly. The court essentially did it in more of a predominance analysis, but decided that each class member must have standing in that case in order for the class to be certified. So we'll be monitoring for that decision to see if it makes its way up to the Supreme Court.

Simon Fleischmann (07:06):
And that's a really important issue for us because while I fully agree with Erin's view that the plaintiff must have concrete harm that's typical of alleged harm that absent class members suffered, the reverse, in my view, has to be true as well. And that's what the Fourth Circuit just said. Because we can't have a situation where a court is contemplating relief for an entire class of people, some of whom may not have been harmed and may not be entitled to any relief. And so that's an evolving issue and from a defense standpoint, really important.

Chris Willis (07:45):
Yeah, thanks both of you for that insight. And I think obviously that forms a very important part of the defense strategy in these cases. Let's move on to the next point that Erin identified. And Simon, let me go to you for this. Classically we think of class certification as something that you litigate after discovery with full-on evidentiary submissions by both parties. But it's tempting if you're the defendant to want to try to knock out the class aspect of a case earlier, maybe even at the pleading stage. And I'd love to hear what's going on in that regard because Erin teased us with that a moment ago.

Simon Fleischmann (08:16):
You're right. And defense counsel, especially in our industry, we love to be aggressive with claims against our clients. And that certainly is true on early motions to dismiss complaints that are filed against our clients. If we have any ability to challenge a case on the pleadings, we're going to do that. And that extends as well to attacks on a case as a class action in the first instance. I've been doing this for 25 years now, and for a lot of the time that I've been working on class actions, defendants have been hesitant to file an early motion to strike class allegations because there's not a lot of law around it. The procedure for how to do that wasn't perfectly clear, and there was real risk that a court would say, "Not only am I not going to strike the class allegations from this complaint, this looks like a case that's perfectly suited for class certification."

And while a court is unlikely to take that step in response to a motion to strike class allegations, there could be comments from the bench that would increase the risk profile and settlement value of a case. And so motions to strike and attacks on class allegations early in the case were relatively rare and often unsuccessful. However, that does seem to be trending in a different direction. Recently, the Fourth Circuit, in a case involving one of our clients, found that the federal rule that applies to early consideration of class allegations is not a Rule 12 or an ordinary motion to strike or dismiss procedural rule, but instead Rule 23 itself, which is the Federal Rule of Civil Procedure that governs class actions. And if you look at the text of that rule, under 23(c)(1)(A), it says that at an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

That rule does not speak to who should be filing that motion, when, other than as soon as practicable, or how and under what circumstances the court ought to bring it up. And so the Fourth Circuit said, under this procedural rule, a defendant can file a motion to deny class certification before plaintiff brings it forward, or before there's discovery, or in the middle of discovery, and there's no limitation under this rule about when that motion can be filed. And so if you are facing a class case and there are allegations or maybe some early evidence that indicate that the requirements for a class action are never going to be satisfied in this case, if there are so many individualized issues like the Fourth Circuit case that I was just referring to, where many different plaintiffs from many different states applied for many different loan products that were evaluated under different standards, different laws applied, there are so many different individualized issues that cut across the individually named plaintiffs themselves.

And it's easy to contemplate how those issues were compounded as you start to consider absent class members across the country, it was clear that these requirements were never going to be satisfied. And the district court struck the class allegations, or denied class certification, I should say, under Rule 23 early in the case, and the Fourth Circuit affirmed that decision. And so that's the kind of thing that we're more focused on now, and procedurally, we have some better guidance about how to bring these issues to the court's attention. And I think there's real opportunity to evaluate whether a case is appropriate for class treatment early on, whether it's on the pleadings or even if the defense wants to come forward with its own affirmative evidence, an affidavit, some documents early on, and really put the plaintiff and the plaintiff's counsel under pressure to show why class treatment is appropriate.

Chris Willis (12:34):
So, Simon, what kinds of cases are most likely to be suited for this early challenge to class certification? Or did you feel like you already answered that?

Simon Fleischmann (12:43):
It's a good question. And there's so many different kinds of class cases in the consumer context. In our industry, there's a real difference, I think, between cases involving claims about the origination of a loan, for example, where you have disclosures that are provided in a uniform way under certain forms or templates, and somebody could say, "Everybody who received this form is included." That may be harder to challenge on the pleadings. But if you look into the allegations and facts and circumstances involving claims that somebody was misled or defrauded at origination, or even if you enter into the servicing time period of a particular loan, if certain representations are made or fees are paid under certain circumstances where issues of borrower or consumer understanding could vary from person to person and that could be subject to varying evidence, those are the kinds of cases where you could really make some hay attacking class certification.

And then finally, I think everybody in our industry has dealt with a class case under the Telephone Consumer Protection Act at one point or another. And in those cases, I've always felt that individualized issues of consumer consent to receive calls on their cell phones for one reason or another is something that, with the right evidentiary presentation, can be effective on a motion to deny class certification, or in opposition to a motion for class certification, or even potentially on the pleadings, depending on the types of facts alleged.

Chris Willis (14:36):
Well, it's great that class action practice is developing to give us the opportunity to have these early challenges to class certification in sort of obviously unsuited cases. And so that's good news. But, Simon, what do we do for cases where that may not be practical or we may try it and it doesn't work, the court doesn't want to rule at the pleading stage? What kind of trends are you seeing when you go to full-on class certification after discovery, kind of later in a case?

Simon Fleischmann (15:02):
It's a great question. And the trend line that I see in class litigation is that courts are really asking for evidence, one way or the other, about whether a class is certifiable or not. There is a tendency among class counsel to come up with clever arguments about why class certification is appropriate, or defense counsel can come up with all sorts of reasons why individualized issues will, down the road, predominate with respect to one account versus another. And while those arguments are true in many cases and effective rhetorically, the way cases are won or lost at class certification really turns on how much evidence and in what way that evidence is presented. And that's really important for defendants to consider because defense strategy usually involves avoiding discovery, dragging cases out, and trying to make our legal arguments to win a case.

On class certification, we really want an evidentiary record to be able to point to all of the individualized issues, explain why this plaintiff's account records don't look like and are not typical of the account records for the absent class members, why there are individualized issues, the kinds of inefficiencies those individualized issues will create, and a real compelling demonstration of the types of varying evidence that will be required from class member to class member in order to adjudicate a case. And that is the type of investment that I think defendants need to make in order to prevail at class certification, which is such a critical time in the case.

Chris Willis (16:56):
Of course it is. Yeah, thanks a lot, Simon. That's very interesting. So, Erin, with this drive towards a rigorous examination of evidence, what has that done to impact class definitions and the issue of ascertainability when courts do certify classes?

Erin Edwards (17:13):
Sure. One of the places where we're really seeing these evidentiary burdens come to life is in how plaintiffs are defining their classes and in the ascertainability requirements. Now, not all courts, not all jurisdictions have this ascertainability requirement, but some still do. And the Fourth Circuit recently confirmed that ascertainability is alive and well there. And so we're on the same page, ascertainability requires that the class is sufficiently definite so that it's administratively feasible for the court to determine whether a particular individual is a class member or is not. And for the plaintiff to meet that ascertainability burden, they must have evidence that they can identify a class member with objective criteria. So, for example, going back to the TCPA example Simon gave a little bit ago, there was a TCPA class action out of the Fourth Circuit where the court found the proposed class wasn't ascertainable because there the class definition generally included all fax recipients.

But the court explained that recipients of the faxes at issue had to have standalone fax machines. They couldn't be those who received faxes through an online fax service. So the court confirmed that in order for the class to be certified, the plaintiff had to provide evidence

that their methodology for identifying appropriate class members was reliable, and just this rhetorical “I can do it this way” or “I might be able to do it this way” wasn’t sufficient. And so the court denied certification on those grounds. And ascertainability also really ties into another big theme that we’re seeing, which I mentioned at the top of the podcast, is that precise definitions linked to a specific legal theory is also critical in these emerging cases. Courts are rejecting class definitions that aren’t precisely mapped to the legal theory. So if you have a vague class definition that’s not linked to a legal theory, that’s not going to fly.

It could come about through poor drafting or even where the complaint has been amended a few times to refine or remove certain legal claims, but then the definitions were not reciprocally amended. And even if they were the same claims from the start of the complaint, if they are not logically linked to the different aspects of the claim, such as the different elements of the claim, then courts are rejecting those as well. For example, there’s a case out of the Southern District of New York where the plaintiffs alleged that their loan servicer was improperly charging inspection fees that weren’t permitted under a uniform Fannie Mae or Freddie Mac mortgage. The plaintiff brought FDCPA claims as well as state breach of contract claims and tried to certify various nationwide classes with various different class definitions. The court denied certification because of this mapping issue.

It explained that the plaintiff’s definition included more than just borrowers who had a Fannie Mae or Freddie Mac mortgage. So that would require the court to go through and analyze each mortgage to determine whether or not the fees that were being charged to the borrowers were permitted or not. Some of the class definitions had no clear connection to any cause of action, and some of the class definitions didn’t map to the FDCPA claim. For example, the class definitions included all borrowers who were charged these fees without any consideration of whether or not the borrower’s loan was in default at the time the servicer started servicing the loan. So all this really creates an opportunity for the defense side. You can attack classes where the members might not be able to be identified from your records. You have to do a borrower-by-borrower investigation. Or also you could attack class definitions that don’t precisely align with the claims.

Simon Fleischmann (21:29):
I want to add to Erin’s comments, which are exactly right. In the case that she’s just referring to involved a situation where the defendant was able to show that if you look at different loan agreements across the class, you’re going to see varying terms and the need for varying evidence. And good on the defendant for putting forward that sort of record on class certification. There is another case where a defendant made a similar argument but had not put forward examples of the different kinds of loan agreements that would create the types of individualized issues and varying evidence that would support denial of certification. And the court said that it was just speculative and not enough to sustain an objection.

And in that case, the court pointed out that the plaintiff had requested different exemplars of the various loan agreements that exist across the class, and the defendant objected to the discovery request and said, “Well, none of that’s relevant.” And so when the defendant came along on class certification and said, “Well, you have to look at all these different loan agreements,” it wasn’t able to support that argument with evidence, and it did not prevail. So that’s kind of a dichotomy of what Erin and I have been talking about during this conversation as

it relates to what a defendant is prepared to present on class certification versus what it would like to argue.

Chris Willis (22:53):
Well, it also suggests that when you find yourself facing discovery requests, the idea of objecting to them has to be tempered by, "Am I going to want this when it comes time to contest class certification?" Because the example that you just gave, Simon, seems like a tactical error, let me say.

Simon Fleischmann (23:11):
Yeah. And I sympathize. Some associate at that defense firm probably just wrote the most basic set of discovery objections without giving much thought to what they'd want to put forward down the road and why.

Chris Willis (23:24):
Yeah, and I have to say, as an aside, Erin, when you were talking about the fax machine case and the idea of trying to ascertain where to find someone with a standalone fax machine, all I could think of was, don't you have to go to a museum to find one of those? Because I certainly haven't seen one in quite some time.

Simon Fleischmann (23:41):
I don't know what your audience is like on this podcast, but I wonder how many people know what a fax machine is.

Chris Willis (23:47):
Yeah, seriously. That's exactly right. So let's close out by talking about sort of the practical considerations here for in-house lawyers. Simon, what should in-house lawyers who manage class action litigation be doing now to prepare for and manage class action risk in light of both the huge surge in class actions, but also the availability of some of these defense strategies that we've been talking about?

Simon Fleischmann (24:14):
There's a lot to unpack here. In the first instance, when an in-house lawyer receives a class action complaint, I think that she or he will want to evaluate whether or not this is really a class action. Oftentimes we'll see cases that are filed styled as class actions, but it's really a single borrower case who's looking for maybe a few extra dollars in settlement funds. And it's clear that either the way the complaint is drafted or maybe a prior history with the plaintiff's firm or just being able to look at the unique circumstances that are described in the pleading that this case is never going to be a class case and it can be resolved most likely pretty quickly on an individual basis or on an early motion. That being said, the in-house team should also very carefully review the allegations that are in the complaint and what the underlying issue is. If it's something that involves an alleged regulatory violation.

At a systemic level, if there's a uniform policy or procedure that's being challenged, if there's a form or a template letter or a disclosure that's going out to a broad set of people, those are the kinds of things that should cause an in-house team to dig a little deeper, see if this is the type of case that could give rise to class risk, and start to gather information about the subject matter pretty quickly and understand whether or not it truly is something that's uniform or a policy that

exists broadly with broad application without unique decision points along the way. And I say that because there's a recent discrimination case where a plaintiff alleged and got past a bunch of motion practice and all the way to class certification alleging that a lender had a uniform practice of discriminating against credit applicants. And when the case got to class certification, the defendant put forward evidence of thousands of different decision points that exist along the way that result in a credit decision.

And if there's a class case that is asserted against a CFS company, those are the kinds of things that I think an initial investigation should be targeted at, whether it's discrimination or a kickback scheme or a fee that is being challenged that arises only under certain circumstances, even though it's alleged to be assessed broadly across a class of people. Understanding those facts and nuances early on in the case is really important. And then I think that clients ought to work with counsel and collaborate to develop the kind of evidentiary record that will be required to put those nuances and individualized issues and varying evidence on full display as soon as possible, whether it's by affidavit early in the case or on a larger motion for class certification.

Whenever it is, rules say you can do it as soon as you can. I'd like to see defendants start to develop those types of theories, gather those kinds of evidence, and be comfortable producing them in discovery so that they could be presented to oppose a case as a class action. Of course, ordinary things like understanding your document retention obligations and do not destroy notices should go out in a way that appropriately affects the retention obligations that our clients have. And then a quick meeting with the relevant business unit within an organization to understand the procedures and the subject matter is also something that should happen early on in a case so that we're not surprised down the road.

Chris Willis (28:14):
Okay, that's an excellent checklist. So Simon, thank you, and Erin, you too for being on the podcast today to share all these insights with our listeners. And of course, thanks to our listeners for tuning in as well. As I said at the top of the show, don't forget to visit and subscribe to our blogs, troutmanfinancialservices.com and consumerfinancialserviceslawmonitor.com. And please also visit us on the web at troutman.com and add yourself to our consumer financial services email list. That way we can send you copies of our alerts and advisories, as well as invitations to our occasional industry-only webinars. And of course, watch your podcast feed every Thursday afternoon for a great new episode of this show. Thank you all for listening.