Podcast: *FCRA Focus*
Episode: From Texas to the Tenth Circuit: Another ID Theft Case Confirms That Credit Reporting Law Is Reshaping
Host: Dave Gettings
Guests: Brooke Conkle and Ethan Ostroff
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Dave Gettings (00:05):
Hello, and welcome to another edition of *FCRA Focus*, the podcast that discusses all things credit reporting. With me today are two return guests, partners of mine, Brooke Conkle and Ethan Ostroff. Or are those their real names? Because today we're going to talk about a developing law of furnisher dispute investigations under 1681s-2(b) with a specific focus on ID theft investigations. And we're going to talk specifically about the 10th Circuit's recent Ward case, which has become just one of the increasing number of circuit court decisions to find that proving accuracy under the FCRA requires the consumer to prove not only that the reported information was inaccurate, but that it was actionably inaccurate, meaning the alleged inaccuracy was objectively and readily verifiable. This growing line of cases has been an extremely important development for defendants in both 1681e(b) cases and dispute investigation cases under 1681s-2(b) and 1681i. I think it's one of the most significant developments in years with respect to accuracy under the FCRA. Brooke and Ethan, welcome to the show. Thank you all for being here.

Brooke Conkle (01:26):
Thanks for having me.

Ethan Ostroff (01:27):
It's good to be here, Dave. I will say I'm not prepared because I thought this was a podcast breaking down post-trade line stuff for MLB, and I had all these things prepared to ask you about your feelings about the gutting of your New York Mets, but happy to talk about the Fair Credit Reporting Act and s-2(b) instead.

Dave Gettings (01:47):
So I'm lucky we reached the point in the season where it hurts so bad for April and May, and then I became numb to it in June and July. And now that NFL training camp has started and my Giants at least look decent in training camp, which is usually the best they look all year is training camp, we don't have to talk about the trade deadline, but I appreciate you ripping the wound off, Ethan.

Ethan Ostroff (02:08):
Happy to be here for that.

Dave Gettings (02:10):
And I believe your Orioles traded their stud catcher from four years ago. So how do you feel about that?

Ethan Ostroff (02:16):
Bittersweet. I like the guy. Wish he would have stayed. But all reports are that he had no indication of signing long-term, so they got a nice haul from the Red Sox.

Dave Gettings (02:25):
All right, back to credit reporting. So we're going to start by setting the scene of the Ward case. We have a father's daughter secretly uses his ID to rent an apartment in Texas. The father's in Colorado and claims he doesn't know about it and ends up with a $500,000 jury verdict in the case he brought related to identity theft and the ID theft investigation that the 10th Circuit has now completely wiped away. So, Brooke, let's start with the basics. Who are the parties, what statute are we dealing with, and why really should our listeners care about this verdict or, excuse me, this decision from the 10th Circuit?

Brooke Conkle (03:12):
Thanks, Dave. Yeah, the parties here are first, on one side, Robbin Ward, the consumer and plaintiff, and on the opposite side, National Credit Systems Incorporated, a debt collector acting as a furnisher to consumer reporting agencies. And Dave, as you mentioned, the core statute here, of course, is the FCRA. That's why we're all here. But specifically, Section 1681s-2(b), the provision governing a furnisher's duty to conduct a reasonable investigation of consumer disputes. And for why this matters, I'll toss it over to Ethan.

Ethan Ostroff (03:47):
Yeah, I mean, look, I think generally when we talk about the ecosystem of lawsuits against furnishers, we're seeing a general uptick in identity theft-related claims. They are typically the most difficult to defend.

Dave Gettings (04:00):
And the most expensive to settle oftentimes too.

Ethan Ostroff (04:03):
And from a plaintiff's bar perspective, the highest value cases usually, particularly when there are multiple disputes, when there are direct disputes also, when there are FTC identity theft affidavits and police reports. I mean, depending on the level of the information and documentation that a consumer has given to a furnisher over time, not just specifically in the context of a particular ACDV. And within the sort of general framework of identity theft-related disputes, we've seen a really, really big increase in what you might refer to as friendly fraud or family fraud, where you have individuals who may be residing together and they may be related to each other or not, but they're

residing together and then subsequently one of them claims identity theft because someone has allegedly stolen their personal information for purposes of renting an apartment or obtaining some sort of loan or buying some sort of product that involves some sort of financial instrument behind it. And so we're dealing with a lot of these. And this... I think this decision is incredibly helpful because the 10th Circuit has waded in here. They had the benefit of amicus briefs both in support of the consumer as well as the support of the defendant furnisher. And I think from a defense perspective, thankfully joined the other circuit courts of appeals in creating this consistency in the context of what standards should we apply and in what ways should a court or a judge in particular be a gatekeeper before certain types of things get to a jury?

Dave Gettings (05:47):
That's a good segue, Ethan. Brooke, let's get into what actually happened here. And I would say it's pretty remarkable, but honestly, as Ethan said, we're seeing more and more of these types of fact patterns every day. So what exactly happened here with the father and daughter and their credit reporting?

Brooke Conkle (06:02):
Thanks, Dave. And that's exactly right. We hear about the facts and oftentimes furnishers are hearing about this kind of over and over again, this situation of family fraud. And so Mr. Ward's daughter used his Social Security number and driver's license, but also fabricated pay stubs, all in order to rent an apartment in Texas. And Mr. Ward claimed that he didn't know anything about this. So a couple of details really stand out, though, that came out of discovery. First, Mr. Ward admitted that he had previously given his driver's license to his daughter for other purposes. Not entirely clear what those purposes were, but he also acknowledged that the pay stubs did belong to his daughter, they just had his name added to them. Now, the furnisher, NCS, was assigned to collect the debt, and they reported it to the consumer reporting agencies. And after investigating Mr. Ward's dispute, which, as we've noted, included an FTC identity theft report and affidavit, NCS concluded that the identifying documents matched Mr. Ward and that the debt was being accurately reported. So NCS investigated and stood by its reporting. There's one really important fact, though. Mr. Ward claimed that it was only until after he filed the lawsuit and going through discovery that he realized that his daughter was the perpetrator. And so that really raises a very serious question about what NCS realistically could have verified at the time, given that Mr. Ward himself did not know who the perpetrator was.

Dave Gettings (07:42):
Yeah. And also gets back to an important point we highlight in a lot of these dispute cases is that the furnisher is often really bound by what the disputer is putting in the dispute. So keep in mind as a practice pointer for defendants when defending against one of these claims, if the dispute itself was really narrow and then they're trying to expand the dispute in the lawsuit, that becomes an argument you can make as to what you actually should have known or reasonably could have known at the time. So Ethan,

NCS investigates, concludes the debt is accurate, keeps reporting, and then Ward sues. How did this play out in the lower courts before it got to the 10th Circuit?

Ethan Ostroff (08:25):
Yeah. So unsurprisingly, on summary judgment, the judge in the district court decided, look, whether or not this is accurate or inaccurate is a fact issue, and it's going to be something for the jury to decide, which is not uncommon, to say the least. And then once all the evidence was presented at trial, the judge again denied a motion for judgment as a matter of law, and this ultimately went to a jury who sided with Ward and, without there being any award for any sort of actual or hard damages, awarded $500,000 in emotional distress damages. And so after that trial court proceeding and that jury trial, NCS appealed. And the sort of upshot of the 10th Circuit's decision here is that the 10th Circuit decided that the district court applied the wrong legal standard, that inaccuracy should have been resolved by the court as a threshold legal matter and a gatekeeping function on summary judgment, not submitted to the jury. And that issue, I think, is a really, really big one going forward in defending these types of cases, is being able to help motivate judges to decide these issues and play more of a significant gatekeeping function at the summary judgment stage.

Dave Gettings (09:46):
Thanks, Ethan. Appreciate that lead-up. And so now, Brooke, before we get into exactly what the 10th Circuit held, let's just zoom out for a second. This decision was not in isolation. As I mentioned in the intro, other circuits had already been wrestling with these questions, and many of them coming to the same conclusion that Ward ultimately did. So give us a little bit of a backdrop of what the legal landscape looked like before Ward and then, obviously, what we can expect afterwards, after Ward.

Brooke Conkle (10:18):
Yeah. And in the past three or four years, we've seen more and more courts of appeals really adopting a standard that is more furnisher-friendly when it comes to the reasonableness of an investigation, particularly in the context of identity theft. So before Ward, the 10th Circuit had not authoritatively stated whether an S2B claim requires proof of actual inaccuracy. Now, there were several district courts within the circuit that had been applying a sort of legal-factual distinction and asking whether a dispute was legal or factual in nature, but before Ward, the 10th Circuit really had not drawn that line yet. And the Court of Appeals in Ward clarifies that the legal-factual distinction really is never about an inaccuracy element; it addressed the reasonableness of a CRA's reinvestigation. Across the circuits, just as you mentioned, Dave, there is an emerging consensus standard that had been forming before Ward that certainly is confirmed after Ward, and that's reported information is actionably inaccurate only if it is objectively and readily verifiable as containing a mistake or error. And we've seen this standard across a couple of courts of appeal. The 2nd Circuit in the Sessa case in 2023, the 4th Circuit in the Roberts case in 2025 adopt this kind of similar framing, confirming that both legal and factual disputes can qualify so long as they clear that threshold. The 5th Circuit in

the Reyes case in 2025 rejected an inaccuracy claim where the alleged error turned on a debt and the debt, whether it was legally viable, that issue had not been adjudicated. The Ninth Circuit has a slightly different standard as articulated in the Gross case. The information has to be patently incorrect or materially misleading.

Dave Gettings (12:15):
Thanks, Brooke. And then also we've got the 11th Circuit, and we have some decisions from the 11th Circuit that seem to be the circuit the 10th Circuit was most closely tracking. We're not going to cover those cases in detail just given the length of the podcast, but we've got the Holden case from 2024 in the 11th Circuit, and then we've got the Rozov case from 2025 in the 11th Circuit, which both lead, in my opinion, to the Ward decision and really help map the Ward decision and adopting this objectively verifiable standard for accuracy in a dispute investigation. So now we'll go specifically to the legal holdings in Ward. So in Ward, at least from my perspective, there are two big legal holdings. So, Ethan, can you take us through the first one?

Ethan Ostroff (13:05):
Yes. So the first major holding is that inaccuracy is a prima facie element to state a claim under 1681s-2(b). And so we've got the 10th Circuit joining the other circuits, and there being consistency and unanimity about a consumer must prove the disputed information was in fact inaccurate in order to prevail on an unreasonable investigation claim. And the court in Ward does a good job, I think, of going through the textual basis to reach this conclusion. It looks at both s-2(a) and s-2(b) in this context to inform its interpretation of s-2(b) and basically concludes, look, the FCRA obligates a furnisher to fix information if it is inaccurate or it's incomplete. So if the information was accurate, no amount of an unreasonable investigation could cause injury to a consumer. And so, practically speaking, a furnisher that reaches the right answer through a bad process should not be liable under s-2(b). If it is accurate, then it doesn't matter whether or not the investigation was reasonable or the depth of the investigation or the quality of the investigation, because the result was accuracy. And so, basically, you got, in addition to sort of the normal four elements or the typical four elements we talk about, which is indirect dispute, unreasonable investigation, proximate cause, and damages, there's sort of now a fifth element, which was, is the information inaccurate or incomplete? And so I think it's going to be interesting to see how the lay of the land plays out over the next couple of years in the context of it being incomplete. Right? The 10th Circuit said in Ward that Ward did not allege or claim that NCS's report was incomplete, so it's not addressing that. But the court did acknowledge there is an alternative to proving inaccuracy, and that is that the reporting was incomplete so as to render the disputed information materially misleading. And so I think we're going to see a focus on that issue going forward, and we're going to see a lot of cases where the arguments are going to be less focused on a simple accurate or inaccurate and more on, is it materially misleading because it's incomplete?

Dave Gettings (15:49):
So a few points on that before we go to the second holding in Ward. So, one, I want to make really clear that these cases about objectively and readily verifiable... And obviously, please let me know if y'all disagree, but these cases on objectively and readily verifiable, these are cases about what it means to be accurate or inaccurate. They're not about the quality of the investigation. And the reason I think that is really important is because there's no reason that concept should be limited to s-2(b). That concept should hold true under e(b) and also under i because each of those statutes have accuracy requirements. And being actionably inaccurate is an accuracy holding, not a reasonable investigation holding with respect to that second prong of s-2(b). And the other thing I'll just highlight, Ethan, you mentioned materially misleading. I still believe it needs to be actionably inaccurate even if you're arguing materially misleading. So if the consumer claims it's misleading, but it's not objectively and readily verifiably misleading, I still think that's a very, very valid defense for the defendant in these cases. Brooke, holding number two, the objectively and readily verifiable standard: what is it and how does it work?

Brooke Conkle (17:08):
That's right, Dave. So reported information is actionably inaccurate only if it is objectively and readily verifiable as containing a mistake or error. So on one hand you have what qualifies, it's purely factual or transcription errors, a straightforward application of law to facts. We're thinking a wrong dollar amount, a mismatched Social Security number, a payment incorrectly marked delinquent. You've got those sort of in one bucket. And then what doesn't qualify: disputes that require complex fact gathering, credibility determinations, quasi-discovery, or resolution of unsettled legal questions. So if a furnisher has to hire a PI to figure out whether or not this is a valid identity theft claim, that's not going to be objectively and readily verifiable. And critically, the Ward court rejected really a bright-line rule. So both legal and factual disputes can qualify. What matters is whether the answer itself is objectively and readily verifiable, not whether the dispute is factual or legal on its face. But the court in Ward was really clear in a holding that is good news for furnishers, this is a legal determination for the judge. It is not a fact question for the jury. And that's a holding that has major implications for all of us going forward.

Ethan Ostroff (18:37):
One other thing that I thought was particularly interesting that I know we'll be mentioning in lots of our cases about identity theft claims is the court actually said, this is a, "and a consumer's submission of an identity theft report supported solely by his own allegations cannot establish the disputed information was inaccurate." And I think that's a really, really important nugget from this opinion because we see so many cases where that is all there is to support a claim that someone is the victim of identity theft is an FTC identity theft report. And this court is saying that's not enough to establish the disputed information was inaccurate.

Dave Gettings (19:28):
I totally agree, Ethan. I feel like this decision, among other circuit court decisions we've already highlighted, are making what should be an obvious point, but that has not been an obvious point to courts. It's that the FCRA is not a vehicle for you to have the furnisher conduct a police-level investigation to determine whether or not you are subject to identity theft. It's just not the vehicle for it, and furnishers and consumer reporting agencies should not be liable for not being detectives. And so many of these ID theft claims we see are very difficult to figure out. I mean, we're lawyers, we get the benefit of discovery, and sometimes we take cases and for months we're like, this could be ID theft or this could not be ID theft. It's not really clear. And that's not a situation, at least in my view, the FCRA was designed to remedy. So let's bring it home. So, Ethan, what are the practical takeaways for furnishers and their counsel when you look at the Ward decision and you look at the, I'm going to say progeny, because this is a legal podcast, the progeny of cases we've seen related to Ward?

Ethan Ostroff (20:39):
Yeah, look, I think it's really strong ammunition at summary judgment stage. I think you have a really good chance of convincing judges that they have to play a more active role in gatekeeping both the accuracy and objectively and readily verifiable standards and not let cases go to juries because they decide to punt on making those decisions. Because traditionally, I think what we've seen is courts generally view whether or not an investigation was reasonable or not as being a jury issue. And now I think defendants will have good arguments about why the threshold accuracy and objectively and readily verifiable issues need to be answered separate and apart from whether or not an investigation was reasonable, and that it's not something for a jury to ever get a chance to decide. And then I think the other big issue... Or I think the other big takeaway is furnishers who conduct a thorough investigation and reach an accurate conclusion are pretty well insulated, even if the investigation wasn't perfect. And that goes back to the basic premise that the FCRA is not a strict liability statute. It's not meant to impose this strict standard for how investigations must be done. And so I think furnishers have some additional arguments now to try to resolve these cases through motions practice. And I would also add my expectation, at least in the 10th Circuit, is we will see how plaintiffs' lawyers may change what they plead in their complaint in order to try to address these threshold issues. And we may end up seeing a lot more 12(b)(6) and 12(c) motion practice at the outset of these FCRA furnisher cases, especially identity theft cases, to test whether or not they can plead enough to get past that on a 12(b)(6) standard.

Dave Gettings (22:39):
And, Brooke, for consumers and their counsel, we're not in the business of providing advice, but what's the practical takeaway?

Brooke Conkle (22:47):
Dave, I think the practical takeaway here is that consumers are going to have to provide more information at the dispute level. Specifically, the Ward court mentioned for

someone like Mr. Ward, he could have obtained a declaratory judgment that he did not owe the debt, then return to his FCRA claim, return to his disputes with that ruling in hand and say, "I have a court order saying I am not responsible for this debt." So there is essentially more work on the front end for consumers. But still, if consumers' disputes contain objective evidence that they do not have a connection to the debt, then that standard can still be met. They're just going to have to provide more facts to support it.

Dave Gettings (23:34):
A lot more than we typically see. I will end on that. Brooke, Ethan, really appreciate your time and joining today. I think this Ward case is just one in a series of significant developments in not only reasonable investigation claims, but in my view, accuracy generally under the FCRA, under various statutes that have an accuracy requirement. And I'm really interested to see how things go and see how courts are addressing these issues on both motions to dismiss and summary judgment, because I think they do really change the legal landscape of some of these cases over the next couple years. I'd like to thank everyone as always for listening to the podcast today. And don't forget to visit our blogs, consumerfinancialserviceslawmonitor.com and troutmanfinancialservices.com. And as always, please subscribe to our podcast at all of your favorite podcasting locations. Thanks for listening.
