Podcast: *The Consumer Finance Podcast*
Episode: Point-of-Sale Finance Series: Litigation Trends — FCRA, TILA, and the Checkout Script as Your First Line of Defense
Host: Jason Cover
Guests: Erin Edwards and Simon Fleischmann
Aired: September 17, 2026

Jason Cover (00:05):
Welcome to a special edition of our continuing Point-of-Sale Finance series. I'm Jason Cover, and today, I'm joined by Erin Edwards, and Simon Fleischmann. Before we jump into today's episode, let me remind you to visit and subscribe to our blog, TroutmanFinancialServices.com. And don't forget to check out our other podcasts on Troutman.com/podcasts. We have episodes that focus on trends that drive enforcement activity, digital assets, consumer financial services, and more. Make sure to subscribe to hear the latest episodes.

Simon and Erin, thanks so much for joining us today. We're going to take a little bit of a different spin than what we've done in the past. I think a lot of our podcast limited series on Point-of-Sale Finance, has really focused, maybe, on the regulatory side of point-of-sale finance, or even the enforcement side. But what we haven't, necessarily, focused is how this is driving litigation trends. So with that said, Simon, could you maybe explain how that concept of financing at the, "checkout," can create litigation risk in this context?

Simon Fleischmann (01:04):
Yeah. Sure. First, Jason, thanks for having us on today. It's great to be a part of this limited series that you're doing. Interesting stuff, and happy to be a part of it. Today, we're going to talk about a deceptively simple moment, which is just checkout. That point-of-sale moment, now involves a no-interest, Pay in 4, Buy Now, Pay Later product, or it could involve a longer-term embedded financing, a retail installment product, or a private label retail card application. The litigation risk often turns less on the product label, and more on what the consumer saw, what the consumer was told, whether a credit report was pulled, what disclosures were provided, and what happened later when the consumer disputed a charge, returned merchandise, missed an autopay, or saw something reported to a credit bureau.

And the federal regulatory picture has also moved quickly. And I know you've discussed this in prior episodes, but the CFPB issued a 2024 BNPL interpretive rule, treating certain digital user account BNPL lenders, as card issuers, for Reg Z purposes. And then it withdrew that interpretive rule in May of 2025. And I bring that up just because the withdrawal of that rule does not make the risk disappear, because there are still FCRA claims, TILA theories, state UDAP laws, there's retail installment laws, private litigation, state regulatory activity, and merchant-lender contract disputes, that remain very much in play.

So our goal for this episode is to try to be practical with your listeners. We want to help lenders, merchants, platforms, and practitioners, spot where point-of-sale litigation trends are going, and just where those issues start. And identify the controls that can keep a small checkout dispute from becoming a regulatory issue, a credit reporting case, or a class action. And so a useful starting point is to broaden the lens from BNPL, to the larger point-of-sale credit ecosystem.

Jason Cover (03:26):
Simon, those are great points. And I think one of the things we really stress, and continue to stress with clients that we've seen, is that application process at point-of-sale, and what the consumer understands. You've seen this in rent-to-own, where one of the common refrains is that folks didn't realize it was a rent-to-own transaction. They thought it was a purchase, or it was credit. I've personally seen our BNPL clients do a great job of explaining how that Pay in 4 transaction works on screen. I'm always really impressed how... This is probably not lawyers doing it, or at least it's not me doing it... But really simplifying the legalese, and how that transaction works into something very simple that folks can understand on screen.

Simon Fleischmann (04:04):
Yeah. I think that's so helpful. I'm glad to hear that that's what our clients are doing, because that could really make all the difference in the world in a litigation matter.

Jason Cover (04:11):
You know Simon, you tailed off there with BNPL, expanding into everything, almost. Erin, I think we have talked a lot about that definition of what is or what isn't a BNPL loan, and how that's shifted over the last two years. Could you, maybe, provide some impact on... Setting aside the regulatory aspect and what the CFPB does or doesn't believe BNPL is... How that is driving the litigation perspective?

Erin Edwards (04:34):
Really, we're talking about Pay in 4 loans, longer-term embedded installment loans, retail installment sales contracts, private label retail credit cards. These can all appear, to a consumer, as a quick checkout option. But they can trigger different disclosures, underwriting, credit reporting, refund, dispute resolution issues. So really, the first legal question is not what marketing calls the product, but how the product actually works. And that means asking whether there's a finance charge, how many installments are required, whether there's a digital user account, whether credit is accessed repeatedly, who owns the receivable, and who controls the checkout script. We've mentioned the CFPB a couple of times; I'll do so again. But the CFPB has described the typical BNPL situation, as splitting a retail transaction into smaller interest-free installments, usually four payments over about six weeks. It's also identified potential BNPL consumer risks

involving autopay, data harvesting, and borrower overextension. But really, the practical point for clients, is that product design, checkout flow, post-purchase servicing, that can't be separated because litigation often stitches those pieces together into one consumer narrative. That's especially true where the consumer experiences the transaction as one seamless purchase, even though the legal and operational structure could involve a merchant, a lender, the platform, a bank partner, a servicer, and a payment method. The litigation is actually going to pull all that together into one process.

Jason Cover (06:18):
Thanks, Erin. And turning back again to Simon, then, that regulatory perimeter really has shifted around in the last few years. Could you help folks listening understand how that CFPB definition is, or isn't, reconciling through what plaintiffs are considering Buy Now, Pay Later, and then also what is happening at the state level as a course of the initial CFPB ruling?

Simon Fleischmann (06:40):
The big picture is, whenever there's a shifting perimeter, it creates some uncertainty that plaintiffs' lawyers are always going to try to take advantage of. And so in our case, we've got the 2024 CFPB interpretive rule, stating that lenders issuing digital user accounts that are used, from time to time, to access credit products to purchase goods and services, are actually card issuers under Reg Z; including when those products are marketed as Buy Now, Pay Later products. And that 2024 rule said that traditional BNPL products, generally, are not open-end credit, or credit card accounts, under an open-end plan. But that lenders issuing digital user accounts to access BNPL credit, were subject to subpart B of Reg Z, including dispute and refund rights. And so that was in 2024, and the CFPB now states on its BNPL resource page that it withdrew that interpretive rule on May 12, 2025. And so that creates, just a practical takeaway for the audience, which is federal interpretive guidance moved one way, and then the other way. But the underlying litigation and compliance risks did not disappear. And a big part of that just shifts over to the states.

And so, that's a big part of this overall picture, with New York being the clearest example. Because its BNPL statute includes requirements involving disclosures, underwriting, credit reporting policies, refunds, disputes, data use, and consequences for loans made by unlicensed or unauthorized persons. So the New York DFS proposed implementing rules in February 2026, that would create a licensing and supervision framework, limit penalty fees, regulate certain charges, require underwriting and disclosures, impose data use requirements, and add foreign language support obligations. And so for our national providers, the point is that BNPL compliance cannot be treated only as a federal Reg Z question, because the state-by-state overlay is becoming a central operational issue. And that regulatory uncertainty, helps explain why plaintiffs so often reach for statutes that they already know well, like the Fair Credit Reporting Act.

Jason Cover (09:07):
Good segue there, Simon. I think the FCRA, along with the TCPA, have always been huge cottage industries for the plaintiffs' bar. Are you seeing FCRA litigation crop up with any particular context in the point-of-sale finance arena? Or is it sort of business as usual?

Simon Fleischmann (09:23):
First of all, FCRA litigation is up generally. And the point-of-sale litigation experience, is definitely a part of that trend. And so we see FCRA litigation in two different moments, relative to this subject: first is the front-end moment, when a consumer report is pulled; and then, a back-end moment when a payment, delinquency, refund, or dispute information is furnished. So just starting with the front-end theory, it just sounds an awful lot like ordinary unauthorized credit inquiry litigations. And that issue becomes very concrete when the checkout interaction sounds like a discount, or rewards offer, but the system processes a credit application. So FCRA section 1681b, matters here, because a consumer report may be furnished only for limited permissible purposes, including written instructions from the consumer, or use in connection with a credit transaction involving the consumer. And that is why the words used at checkout matter so much here. So if the consumer hears, "Hey, save 20%," but the operational reality is, "Hey, apply for credit," the alleged unauthorized inquiry claim, becomes much easier to tell for a plaintiff.

Erin Edwards (10:49):
Yeah. And just to jump in here. The back-end issue, then, for FCRA, is furnishing, right? That's something I deal with all the time. 1681s-2, prohibits furnishing information that the furnisher knows, or has reasonable cause to believe is inaccurate, and it requires correction and updating when the furnisher determines that that information is not complete or accurate. But the private litigation hook, where we're often involved, that is in the FCRA section 1681s-2(b) context. And that statute subsection, imposes duties after a furnisher receives a notice of a dispute from a consumer reporting agency. And once triggered, those duties include investigating disputed information, reviewing relevant information provided by the consumer reporting agency, reporting the results, and correcting incomplete or inaccurate information where appropriate.

And just one recent example, is a case where a pro se plaintiff sued their BNPL lender, after there was a pool table purchase. The plaintiff was alleging that there was a partial refund, a remaining loan balance, a charge-off, and negative reporting, that was all inaccurate. But the court dismissed that case with prejudice after concluding, one, the defendant creditor wasn't a debt collector under the FDCPA... There was an FDCPA claim... But more relevant for this discussion, that the plaintiffs had not alleged that the credit reporting agency provided notice to the BNPL lender to trigger section 1681s-2(b) duties. Which, we of course know, that's not a surprise. But we see this issue in opinions coming out, even in this BNPL context.

And the practical advice for companies, is to really map the dispute path before litigation. Identify what the complaint is really about: if it's a merchant performance issue; refund processing issue; payment authorization issue; or if it's really an FCRA case, where there's a CRA-triggered investigation. And for the defense, the evidence file should include the application flow, consumer authorization, credit pull acknowledgment, payment schedule, a refund chronology, and investigation notes and furnishing decisions. That's all really helpful in defending against these cases. And of course, that naturally leads to pro se litigation where we're seeing a lot of uptick, because many of these cases start with consumers who are just frustrated about the deliveries, the refunds, autopays, and the credit reporting that flows when there's a missed payment.

Jason Cover (13:37):
That's really interesting. And in my mind, while I'm listening to you, this goes hand in hand back to the BNPL question of, is or isn't this a credit card? Do we have billing error dispute rights? And we've always warned clients, you can't just check one, right? You think it's one type of dispute, a furnishing dispute, or a billing error dispute, but you have to make sure that that claim, when it comes in... Or a holder rule claim even, right. There's a laundry list of these things, that once you're involved in point-of-sale, that you need to really start thinking about. And the furnishing one, is just one more complication, I think, for folks to deal with.

Erin Edwards (14:10):
Absolutely. Completely agree.

Jason Cover (14:11):
And Erin, you'd mentioned the pro se litigation. Are you seeing increased trends of pro se litigation on high-volume dockets?

Erin Edwards (14:18):
Absolutely, we're seeing that. With accessibility to AI products now, where those are widely accessible by anyone who wants to use them, pro se litigation is just skyrocketing in all contexts. A good way to explain it in this space, is that the consumer story is often really simple, at least in their mind. But their legal theory is often messy. So when we're seeing the outputs from their AI-generated products, it's often hard to really glean the right legal theory, or get these cases into the right dismissal posture. So it's something to definitely be aware of. Those facts that they're providing in these complaints that are generated by AI products... It's not always AI products, but that's what we're seeing most frequently... They can implicate very different legal questions, including merchant issues, refund issues, EFTA authorization. Of course, FCRA furnishing, we've seen the FDCPA come up a lot, TILA disclosure issues. And of course, state UDAP law.

Simon Fleischmann (15:22):
Very much agree with everything Erin just said. And I would say, specific to point-of-sale litigation, we see autopay and fee theories that are especially intuitive for consumers, because the CFPB has identified forced opt-in to autopay, and multiple fee consequences, as BNPL consumer risk themes. And so, we see BNPL fee lawsuits. We've been seeing those for a long time following a very basic consumer narrative, along the lines of, a consumer disputing an overdraft, or an NSF fee for payments on products that were advertised as having no interest or no fees. And we're seeing a development, more recently, in class litigation, alleging that mandatory autopay, and lack of underwriting, violated the Truth in Lending Act, the Electronic Fund Transfer Act, and Illinois consumer protection laws.

And those are relatively recent lawsuits, and the allegations are pending, they have not been adjudicated. But that's the type of theory that we're seeing more recently now. And so for docket management, companies should not dismiss pro se cases that come in disputing a fee, or an autopay opt-in, just as a small case, because these same theories are being asserted on a class-wide basis now. And so, staying on top of it will really help avoid a potentially bigger litigation matter down the road.

Erin Edwards (16:59):
And one thing just to point out, too, especially in the FCRA context, is that a small dollar dispute over a small BNPL loan, can end up costing a lot with the attorney's fees provision that's there. Of course, that's not always the case in pro se litigation, but it is something to keep in mind in the FCRA context.

Simon Fleischmann (17:19):
Yeah. And so, what we try to do for litigation management, and risk, generally, is try to think about triaging cases within a four-question framework. So first, I'm going to look at what was the consumer told at checkout. Next, what did the consumer authorize? What happened in the refund, or autopay flow, that's the subject of the claim being asserted? And for FCRA purposes, what was furnished or investigated, after the dispute? And so that type of triage can help us separate cases that can be resolved operationally, from cases that need an early motion, an arbitration analysis, or a preservation hold, because they could become something more complex in the nature of pattern and practice litigation.

Erin Edwards (18:10):
That's really true, too, in the merchant context as well. That operational mapping, is useful and important because many of the consumer disputes are really about who owns the problem after the consumer hits the return, cancel, or disputes the transaction.

Jason Cover (18:26):
Yeah. And Erin, I think we've increasingly seen that come up from an enforcement perspective. I think both you and Simon alluded to this. Could you speak to a bit on

what happens when there is a dispute with the merchant, whose problem that is? Or there's a refund, and where should those funds go to? These kind of matters that you don't have when you just have cash-out loans, or credits occurring, right? There's something specific to this point-of-sale transaction, because we're so enmeshed with a merchant... Maybe one particular merchant... That these issues really crop up, I think.

Erin Edwards (18:56):
Yeah. And the consumer, usually, doesn't experience the transaction as a neat set of separate contracts among the merchant, the lender, the bank partner, or the platform, the servicer. They think it's just one transaction. But really, behind the scenes, there's a lot going on there. And if the merchant accepts a return, but the lender keeps collecting, or if the consumer receives only a partial credit, the consumer often views that as the entire ecosystem being responsible. That's why fund flows, or refund flows, and dispute handoffs, deserve the same attention as disclosures.

Simon Fleischmann (19:35):
That's right. And let me just jump in here, because I think the Reg Z billing error commentary, provides a helpful reference point because it addresses disputes about goods or services that were not accepted, or delivered as agreed, including wrong quantity, late delivery, and delivery to the wrong location. Reg Z also addresses prompt crediting of refunds, including crediting an account as of a date within three business days after the card issuer receives the credit statement. And then New York's BNPL statute addresses the same practical problem, by requiring refund and credit processes that are fair, transparent, and not unduly burdensome to consumers. Which it's tough to define exactly what that is.

Erin Edwards (20:23):
The merchant contract should match the operational reality as well. It should answer who decides whether a refund is owed, who sends the refund instructions, how quickly the lender updates the balance, who owns the consumer communications, and who indemnifies if the sales script or return process creates a claim.

Simon Fleischmann (20:41):
Right on. And then for litigation prevention purposes, I think the most important merchant-side control, is just having a shared evidence file that includes the checkout disclosure, authorization, order confirmation, shipment and delivery status, return request, refund decision, balance adjustment, and consumer communications, just so that everybody's looking at the same body of information while evaluating these disputes.

Erin Edwards (21:07):
Yep. And one concrete place where all these themes could show up, is in the retail card enrollment process, because it combines that checkout script, the credit pull, APR

disclosures, signature, and later disputes over what the customer thought was happening.

Jason Cover (21:22):
Erin and Simon, these are really great points. And I particularly like that idea of at least looking to Reg Z to solve for some of these things. I've talked to clients that say, "Hey, we're not a card, and we don't think we're subject to the Card Act provisions of Reg Z," but we realize the need for some sort of dispute mechanism where there's issues with the merchant, vis-à-vis the consumer. I always point, as an initial matter, to Reg Z, even if you don't follow the exact timeframes and rote procedural aspects of it, I like that idea of having a framework there, that you can, at least, have something to start from. I don't know about you, but at least in litigation, it would be a nice thing to point to, I think.

Simon Fleischmann (21:56):
Yeah. I agree. So much of this is just being able to advocate for our clients' operations, in a way that makes sense and is easy to understand. And so if you're dealing with something in New York, for example, where they're saying, "Hey, we expect a fair and unburdensome process," we could say, "Look, our process aligns with what Reg Z says is appropriate, even though we're not regulated by that particular regulation." I just think that makes a facially reasonable story to tell, and it's something that should be easy for us to stand at the podium and tell a court or regulator, with some degree of confidence and care.

Jason Cover (22:32):
And with that in mind, Simon, I guess we've maybe intentionally stayed away from talking too much about cards over the course of this Point-of-Sale Finance series, on the theory that people already know about cards. In thinking about it, it seems like looking at cards could be a really good way to examine risk, and some of the litigation trends that come from that. Is that a safe assumption?

Simon Fleischmann (22:51):
Yeah. I think it is. Because the same issues come up. It all boils down to what is said at that checkout moment between the representative of the company, and a consumer. And so then these issues are just not limited to BNPL products, even though that's been a huge topic of conversation recently. Retail card enrollment, creates these same issues. And a lot of it relates directly back to the digital checkout flow. And I think cards are especially important, because many retail cards carry higher APRs relative to other cards, and are offered in these fast-moving sale environments. So it's a familiar reoccurring fact pattern, when a consumer who thinks they agreed to a discount or a rewards enrollment, while the merchant or the lender treats that interaction as a credit application. And that fact pattern can lead to claims involving FCRA section 1681b, as we discussed before, involving unauthorized credit pulls. It can involve TILA, Card Act deferred interest disclosures, and of course, state UDAP or common law theories.

So we think about the scripts that we have at checkout. And Jason, you mentioned at the top that our clients are getting really good and clear about having those scripts in place and following them. And I think that is really what will make all the difference. Because if you have a good, clean script where somebody at the checkout counter says, "Hey, would you like to apply for one of our store credit cards to save 20% today? The card has an X percent APR, and may I show you the full terms?" that's going to be the type of thing that is less likely to lead to confusion and litigation down the road, and is much preferable to the other type of risky and vague fact pattern where somebody says, "Hey, would you like to save 20% today? I just need your ID and your Social Security number, and we'll be off and running." That's the type of thing that can cause problems following just confusion and uncertainty in that moment.

And so the prevention point is simple. Just say credit card, say credit account, mention the APR before collecting information, and provide written terms before the application. Obtain a clear signature, and just do not pre-fill applications when the consumer is not present. And then, of course, monitoring and developing evidence, is just as important as that script. And so, useful controls include mystery shoppers, recorded interactions where that is lawful, complaint tracking, discipline for non-compliance, electronic applications with a Schumer box, deferred interest reminders, timestamp signatures, retained terms, retained applications, and acknowledgment of a credit pull. So for these purposes, the podcast-friendly takeaway, is that compliance should make the credit nature of the transaction unmistakable before the consumer gives sensitive information. And the record of your compliance, should be clear and retained in case you need it.

Jason Cover (25:54):
Those are all fantastic points, Simon. And I hope the audience is hearing that they echo a lot of the things that we've been talking about now, I guess, for the last year or so. In wrapping up here, throwing a bonus question out for you both. If you could recommend one thing for folks to get ahead of, or pay attention to, that would reduce or mitigate litigation risk, what would those be?

Erin Edwards (26:16):
For me, probably my biggest thing is what Simon's been talking about a lot, is that checkout script. Make sure that before the first payment is ever due, that you have a clear script of the product label, the APR disclosure, the customer authorizations, all that document... Or that whole document trail, can really become central evidence in a later FCRA, TILA, UDAP merchant dispute case.

Jason Cover (26:45):
Simon, any thoughts from you?

Simon Fleischmann (26:47):
I just think that people need to keep in mind that regulatory uncertainty does not reduce their risk. We talked about the CFPB withdrawing the 2024 interpretive rule, but state

regulators, state statutes, private plaintiffs, and existing federal laws, remain very active as a source of exposure. And I think the FCRA example is a good one to keep in mind, because that really does have two lives. There's the front-end, permissible purpose question, when the credit is pulled; and then there's the back-end furnisher question, when payments, refunds, defaults, and disputes are reported. Another takeaway I want everybody to think about, is that refund and merchant-side flows deserve the same attention as your disclosures. Because consumers and courts will focus on whether the post-purchase process was fair, transparent, and supported by your records.

And so, the overarching practical takeaway is pretty straightforward. Everybody should audit point-of-sale scripts, test the online and in-store checkout flow, confirm that the product is classified correctly, preserve evidence of authorization and disclosures, map your refund and dispute handoffs, validate furnishings and investigation procedures, and make sure that merchant contracts allocate the risks that operations actually create. And that's really the sweet spot for managing point-of-sale finance litigation risk, overall. Make the credit product unmistakable to the consumer. Make the operational handoffs auditable. And make your litigation record before anybody is litigating.

Jason Cover (28:30):
Those are all really fantastic points from you both, and I think, really great practical recommendations for clients and others out there listening. Erin and Simon, thank you so much for joining us today. This has really been fantastic. And thank you to the audience for listening to today's episode. Again, don't forget to visit our blog, TroutmanFinancialServices.com, and subscribe so you can get the latest updates. And please make sure to also subscribe to this podcast via any platform you prefer. Thanks so much.
