

# 4th Circuit Approves Industry Changing Settlement Attained by Team of Consumer Lawyers Including Francis & Mailman, PC

Law360, Los Angeles (December 4, 2015, 10:28 PM ET) -- The Fourth Circuit on Friday upheld a \$13.5 million settlement in a class action alleging LexisNexis Risk and Information Analytics Group Inc. violated the Fair Credit Reporting Act by selling reports to debt collectors without first obtaining users' certification, rejecting class objectors' arguments that the deal's injunctive relief was unfair.

The Fourth Circuit panel found the lower court properly certified the settlement class and that the statutory damages claims released under the deal weren't individualized and didn't threaten class cohesion. In addition, it ruled that the objectors' arguments that class members should have received monetary relief in exchange for statutory damages claims to be unfounded, noting that the injunctive relief in the agreement was estimated to be worth billions.

"The objectors' exclusive focus on the absence of monetary relief is unsupported by law and also imprudent as a matter of common sense. There was no realistic prospect that Lexis could or would provide meaningful monetary relief to a class of 200 million people," according to the opinion.

In appealing the approval of the 2013 settlement, objectors argued that additional monetary relief on top of injunctive relief was necessary and that objecting class members hadn't been given sufficient opportunity to opt out of the settlement. The settlement covered two classes, one seeking monetary relief and another seeking injunctive relief. The appeal took issue with the injunctive relief and attorney's fees, but put the entire settlement at stake.

The underlying dispute centered on whether reports generated by Lexis' Accurant service, which were used by debt collectors to track down consumers, were "consumer reports" as defined under the FCRA.

The suit alleged LexisNexis provided consumers incomplete copies of their Accurant files even though they asked for a "full file disclosure."

When one plaintiff contacted the company regarding the accuracy of information contained in an Accurant report about him, LexisNexis allegedly failed to take the actions required of "consumer reporting agencies" when such disputes are raised with respect to "consumer reports" as defined under the FCRA.

The plaintiffs contended that the reports were consumer reports under the act. Since LexisNexis did not treat them as such, it violated the FCRA by selling the reports without first obtaining certification from users, the plaintiffs alleged.

Under the proposed settlement, about 31,000 class members will get a payment from the \$13.5 million deal. LexisNexis will also separate its sale of Accurint for Collections reports — which it currently does not treat as "consumer reports" as defined under the FCRA — based on content and use, according to a joint motion to approve the settlement.

On Friday, the Center for Class Action Fairness, which had participated in briefing on behalf of the appellants, said the ruling conflicts with rulings in the Fifth, Seventh and Eleventh circuits concerning injunctive relief in class actions.

"Even though the underlying statute prohibits injunctive relief, the Fourth Circuit affirmed a class settlement subjecting the entirety of the 200 million member class to injunctive relief, leaving the class with limited options for recourse," CCAF attorney Adam Schulman said in a written statement. "We fear this ruling will allow unscrupulous class counsel to settle in ways that benefit themselves, while withholding the remedies that Congress wanted class members to have."

The Fourth Circuit said in its opinion Friday that in order to recover statutory damages under the FCRA, the class would have had to show that Lexis willfully violated the act, and that it adopted an "objectively unreasonable" reading of the law in concluding that its Accurint reports weren't covered as "consumer reports." But a Federal Trade Commission opinion letter offered guidance that the Accurint reports weren't consumer reports, casting doubt as to whether the class could have met that burden, the court said.

And while the FCRA didn't provide for injunctive relief in private actions, the authority for the injunctive relief actually flows from the settlement agreement between the parties, the appellate court found.

"And Lexis is free to agree to a settlement enforcing a contractual obligation that could not be imposed without its consent," the opinion said. "Indeed, many FCRA class action disputes are resolved in part through consent decrees."

Following the opinion, class attorney Michael A. Caddell told Law360 that the objectors' arguments were questionable, and that the class received meaningful relief in the settlement. He added that the class didn't give up their actual damages claims in the deal.

"[The objectors'] arguments are specious at best and disingenuous at worst when [they say] that there's a circuit split," he said, adding that they are "confusing the standard that applies to a litigative class certification versus a settlement class certification. It's clear that there is a difference. This is like Law School 101, that you can obtain in a settlement what you can't obtain through litigation."

Arguing on behalf of the objectors was Richard Monroe Paul III of Paul McInnes LLP.

Arguing on behalf of the settlement class and Lexis were William Walter Wilkins of Nexsen Pruet LLC and Joseph R. Palmore of Morrison & Foerster LLP.

The case is Gregory Thomas Berry et al. v. LexisNexis Risk & Information Analytics Group Inc. et al., case numbers 14-2006, 14-2050 and 14-2101, in the U.S. Court of Appeals for the Fourth Circuit.