Federal Judge Rules that Experian's Agents Overseas Can Be Deposed

November 19, 2012 - An article in the Privacy Times this month makes note an important federal court ruling. The judge in the case determined that employees of a "sister company" of Experian could be deposed in a US consumer credit case. The ruling is extremely important because the case involves a credit dispute in which a consumer had apparently provided documentation to Experian that should have resulted in a credit report change. But Experian apparently outsourced its dispute resolution overseas; making it difficult for any consumer who wanted to file suit. If the ruling stands, it will mean that consumers attempting enforce their rights in court under the Fair Credit Reporting Act may have an easier time proving their case when one of the parties being sued uses services provided outside of the United States. Here is the article from the Privacy Times.

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Deposing Experianâ€™s Agents In Chile

In the first known ruling of its kind U.S. Magistrate Judge Mikel H. Williams has ordered Experian to make available for video deposition three of its Chilean agents who handled, or mishandled, Plaintiff Jose Luis Calderonâ€™s disputes over accuracy. He rejected Experianâ€™s arguments that the credit bureau could refuse to produce them for deposition because they only worked for Experianâ€™s sister corporation in Chile, or because such foreign depositions were barred by Chilean law. He said it was â€œat least a â€˜close questionâ€™ as to whether the individual dispute agents qualified as Experianâ€™s a agents.â€• The ruling is significant because all three major credit bureaus are regularly sued under the FCRA, and each of them outsource dispute processing to foreign countries.

Judge Williams said that under the case law, â€œit is not so much the title or status of an individual within the corporation, but

his or her duties and responsibilities respecting the subject matter of the litigation that is important. Even accepting Experianâ€™s characterization of these employees as â€œentry level,â€• the fact remains that they were the individuals who we charged with handling Plaintiffâ€™s disputes, and they are therefore the only people who might have information about what was actually done, as opposed to simply what Experianâ€™s policies and procedures theoretically required. That credit reporting companies are required by federal law to ensure the maximum possible accuracy of credit reports is another factor in this calculus. Statutory duties are statutory duties; that they may be performed by subordinate employees is not determinative. Further, the factor which many courts have described as â€˜paramountâ€™ also cuts in favor of allowing the depositions, because there is no reason to suppose that Experian Chileâ€™s Chilean employees would identify with a plaintiff half a world away, as opposed to the corporation which provided them with their livelihood. Finally, the Court is concerned that Plaintiff has not had complete discovery into the status of these agents or the amount of discretion that they possess. For all these reasons, the currently employed dispute agents may be considered â€˜managing agentsâ€™ for purposes of taking their depositions, with the final determination as to whether they can bind Experian on any particular issue to be made at trial.â€• (Jose Luis Calderon v. Experian Information Solutions: USDC-Idaho â€“ No. 11-cv-00386-EJL-MHW; October 31.)

byJim Malmberg
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