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COURT RULES PRINTING PARTIAL EXPIRATION DATE ON CREDIT CARD RECEIPT VIOLATES FCRA

The United States Court of Appeals for the Third Circuit recently held that Section 1681c(g)(1) of the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act, prohibits a merchant from printing expiration date information on a receipt provided to the consumer, even if the year is redacted. *Long v. Tommy Hilfiger U.S.A., Inc.*, 2012 WL 180874 (3rd Cir. Jan. 24, 2012).

The case involved a class action by Long against Hilfiger claiming that Hilfiger's printing of the month, but not the year, of his credit card's expiration date on his card receipt violated the FCRA's prohibition against printing the expiration date. Section 1681c(g)(1) of the FCRA prohibits a person that accepts credit cards from printing more than the last five digits of the card number or the expiration date on any receipt provided to the cardholder. The remedies for violation of this section depend on whether the violation was negligent or willful. Only actual damages are available for negligent violations, while statutory damages between \$100 and \$1,000 and punitive damages are available for willful violations. The district court, ruling in favor of Hilfiger on the Section 1681c(g)(1) question and, in any event, finding no willful violation, dismissed the case.

On appeal, the court concluded that the phrase "expiration date" refers to information or data in the expiration date "field" on the face of the credit card. The FCRA, the court found, prohibits a merchant from printing the numbers in that field, whether they be all the numbers or only a part or portion of those numbers. If Congress had intended to allow partial printing, the court reasoned, it would have used different language. The court rejected Hilfiger's reliance on the Credit and Debit Card Receipt Clarification Act, which was enacted in response to a flurry of lawsuits against merchants for their failure to remove expiration dates, even though the credit card number was truncated properly. See DTS Alert dated June 16, 2008. Despite having an opportunity to specifically consider the issue in connection with the Clarification Act, the court observed, Congress did not change the language of Section 1681c(g)(1) or otherwise alter the liability standard of the statute. Based on this reasoning and

consistent with its obligation to interpret a remedial statute broadly, the court found the plaintiff had properly alleged a violation of the FCRA. Whether the district court's granting of the defendant's motion to dismiss would be upheld, however, would depend on whether the FCRA authorized any recovery for the violation.

Long alleged no actual damages, but instead sought statutory and punitive damages under Section 1681n(a), which requires a showing of "willfulness." Relying on the United States Supreme Court's decision in *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007), the court determined that Hilfiger's action could be considered willful only if Hilfiger's interpretation of the statute were "objectively unreasonable." Because there was some foundation for Hilfiger to believe that its actions would not violate the FCRA based on the plain meaning of the phrase "expiration date," and because there had been no guidance from federal courts of appeals on this issue, the court found Hilfiger's actions to be objectively reasonable. Thus, the court affirmed the dismissal of Long's claim.

In addition to federal law, numerous states have laws similar to the statute at issue in *Hilfiger*. Issuers may wish to review their policies and procedures to ensure that their printed credit card receipts are in compliance with any applicable law and this ruling. □

✧ *Judy Scheiderer and Margaret Stolar*

Darrell L. Dreher
ddreher@dltlaw.com

Judith M. Scheiderer
jscheiderer@dltlaw.com

Elizabeth L. Anstaett
eanstaett@dltlaw.com

Charles V. Gall
cgall@dltlaw.com

Susan L. Ostrander
sostrander@dltlaw.com

DREHER TOMKIES SCHEIDERER LLP

2750 Huntington Center

41 S. High Street

Columbus, Ohio 43215

Telephone: (614) 628-8000 Facsimile: (614) 628-1600

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Michael C. Tomkies
mtomkies@dltlaw.com

Margaret M. Stolar
mstolar@dltlaw.com

Robin R. De Leo
robin@dreher-la.com

Vanessa A. Nelson
vnelson@dltlaw.com

Kathleen L. Caress
kcaress@dltlaw.com