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Credit Damage and Interference with Credit Expectancy: A New Field of Endeavor in Forensic Economics

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Credit Damage and Interference with credit expectancy is something every consumer is aware. While a 700+ score from a Credit Reporting Agency (Equifax, Experian, Trans Union) may yield a low-interest rate for a mortgage loan and the lowest interest rate on a credit card or for purchase of an automobile or for a durable purchase at a store, a 600, or worse, a 500 score, generate directly opposite results. When the Credit Reporting Agency places wrong and harmful information in your credit report, whether through their error or the error of a reporting retail or financial entities, opportunities in utilizing credit are diminished, and the consequences in having to pay high interest rates are assured. This article reviews many cases associated with credit damage issues, and, sadly, concludes that far too many otherwise genuine Plaintiff-driven cases of credit damage and interference with credit expectancy are dismissed in summary judgment owing to the failure of Plaintiff Counsels to understand the manner Defendant actions must be articulated to the Court as a violation of one or all four of the following pieces of Federal legislation: Fair Credit Reporting Act 15 USC §1681 (FCRA), the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, et seq. (ECOA), the Fair Debt Collection Practices Act (FDCPA), and the Federal Consumer Protection Act (FCPA).

1. Introduction

There is a new field emerging in Forensic Economics of damages associated with loss of credit standing and loss of credit expectancy, also known as interference with credit expectancy. We know this field to be "new" as existing literature is virtually silent on the subject. There are no papers published in either the *Journal of Legal Economics* or the *Journal of Forensic Economics,* and the term "credit expectancy" does not feature in the index of Martin and Weinstein's *Determining Economic Damages*, in the 2012 or any prior edition. The only exception is a foray into this topic by Stan V. Smith [1] and a rebuttal paper by me [2] published in the same journal. Other than for these pages in a lone learned journal, and 44 cases available in LEXIS using the search word "credit expectancy" together with a series of mostly defense motions from the Westlaw catalogue, there are no other extant writings on credit damage and credit expectancy damage, either in print or in testimony.

It seems strange to use the word "new" for evidence of litigation traveling as far back as 1844. In *Mechanics' Bank v. Gorman* [3], we read of an action by a creditor (Mechanic's Bank) against a third party (William T. Gorman). The essence of the litigation was that a Mr. Gilliams wished to avoid any negative consequences of a lien held by Mechanics' Bank, and as such instructed an agent, Mr. John M. Odenheimer, to negotiate on his behalf a satisfactory resolution to the lien and credit claim against him by Mechanics' Bank. To facilitate this objective, Mr. Gilliams transferred his real estate interest to Mr. Odenheimer. When Mr. Odenheimer, acting as a fourth party, sold the real estate to the defendant, Mr. Gorman, Mechanics' Bank lost its lien collateral and Mr. Gilliams lost not only his real estate but his hope for mitigating any negative credit consequences from the loss of real estate. In other words, his credit expectancies that he would continue to be perceived as credit-worthy and solvent were lost.

It doesn't take a wide stretch of the imagination to impute value to a farmer, for example, of being perceived as solvent. 1844 is no different from 2013. For a vendor to approve a transaction to a farmer, whether in the passing of money in a loan or sale of horses on account, the vendor would first vouch the credit worthiness or solvency of the other party. Transferring the analysis to the modern era, the same importance of being perceived as credit-worthy can be seen from a recent 2013 case, *Guzek v. Wells Fargo Bank et al.* (D. MO 2013). "Plaintiffs seek damages for defamation, alleging that Defendants reported to various credit bureaus that Plaintiffs were in default and that this was false. And in Count III, labeled 'Intentional Interference with Credit Expectancy,' Plaintiffs claim that as a result of Defendants' alleged defamatory statements and illegal foreclosure, Plaintiffs have been unable to obtain credit, justifying an award of punitive damages against Defendants."[4]

Guzek establishes that credit expectancies are as much a concern in 2013 as in 1844 as shown by *Mechanics' Bank*. Litigation exists for a plaintiff to win financial remedy as much then as now when a plaintiff's credit is wrongly diminished by the actions of a defendant.

2. Interference with Credit Expectancy

Interference with credit expectancy is premised on the basis of determining an amount an individual could have been expected to be able to borrow over the period of time when the individual's credit has been allegedly injured. An interest rate differential for that amount of credit for that amount of time comprises the estimate of loss of credit expectancy.

Routinely, this estimate of damages is coupled with an estimate of the amount of time the individual spent trying to get the credit problem resolved times a wage rate for that time. Often too, an estimate of hedonic damage loss during both the period of alleged credit loss and after the credit issue was resolved is employed, and, always, this element of the credit damage claim exceeds that of straight credit expectancy damage and value of time spent addressing the credit expectancy damage. Since there is nothing particularly unique about measuring lost time using a wage rate per unit of lost time and since issues involved with hedonic damage loss calculations have been handled extensively in other places [5], this article deals exclusively with alleged loss of credit expectancy.

In an examination of 44 cases in LEXIS and dozens of defense motions in the Westlaw catalogue, only two names come up listed as economic experts for credit expectancy damages: Robert Moss for a case in the state of Washington [6] and Stan V. Smith for six cases in a variety of states [7].

Moss, in his one and only case, is clearly more successful than Smith at having the court recognize both a credit expectancy argument if not his precise quantification of it, and hedonic damage profiled as emotional distress.

Bloor v. Robert A. Fritz, et al. (D. WA 2008)

After learning the home Eddie and Eva Bloor purchased from Robert and Charmaine Fritz through Lance Miller, an agent at LC Realty, Inc. that the home was contaminated by a methamphetamine lab, the Bloors sued the Fritzes, Miller, LAM Management, LC Realty, and Cowlitz County. The trial court found that the Fritzes negligently misrepresented the condition of the property and that Miller failed to disclose a known material fact about the property and negligently misrepresented its condition, thereby violating the Consumer Protection Act (the Act). Miller and LC Realty argue that substantial evidence does not support the trial court's findings that Miller knew of the illegal drug manufacturing on the property and failed to disclose it; they also argue that the Bloors failed to prove an Act violation. The Fritzes argue that the trial court erred in (1) failing to dismiss the negligent misrepresentation claim and (2) rescinding the real estate purchase and sale agreement. The Fritzes and Miller both challenged the trial court's damage and attorney fee awards.

The Bloors sued the Fritzes, Miller, LAM Management, LC Realty, and Cowlitz County. After a bench trial, the trial court ruled for the Bloors, awarding them damages jointly and severally against all the defendants for **emotional distress** (*my **bold***), loss of personal property, loss of income, loss of use of the property, and damage to the **Bloors' credit** (*my **bold***). It also awarded the Bloors $10,000 as punitive damages and $13,907.30 for attorney fees against Miller and LC Realty under the Act. It ordered the contract between the Bloors and the Fritzes rescinded, requiring the Fritzes to pay the Bloors' lender the purchase price, accrued interest, late charges, and foreclosure fees, and the Bloors to return the property to the Fritzes. Finally, the trial court awarded the Bloors $18,975.55 in expenses against the Fritzes and, applying a 1.2 multiplier, $125,335.25 in attorney fees against the Fritzes, Miller, and LC Realty; it awarded the Bloors their statutory costs against all defendants.

The Appeals Court examined the following in this order: 1) Negligent Misrepresentation; 2) Recission; 3) Damages; 4) Emotional Distress; and 5) Litigation Expense. This paper looks at only damages and emotional distress. [8]

Damages

The Fritzes argued that insufficient evidence supports the trial court's award of damages for loss of income and damage to the Bloors' credit rating. "The Fritzes do not dispute that the Bloors' credit ratings dropped by about 100 points each from the time they bought the house to the time of trial, but the Fritzes attribute that drop to the Bloors' history of poor financial management rather than the loss of the house. Yet the Fritzes do not explain how the Bloors' past financial mismanagement would cause a current drop in their credit ratings. The Bloors' expert – Robert Moss (my *add*) — testified that a 100-point drop in credit rating would cause a buyer to incur about $10,000 more in interest costs over the first 7 years of a loan. The Fritzes offered nothing to rebut this testimony, which supports the finding that the drop in the Bloors' credit ratings caused the Bloors damages."

As we will see in a moment, unlike the Smith cases which are routinely thrown out owing to speculation and a wrongly misconceived idea of hedonic damages, Moss is clearly vindicated here in his usage of credit expectancy damage. However, it is worth noting that he worked from an actual debt or loan to calculate an actual loss of interest rate available to individuals with credit scores 100 points higher.

Emotional Distress

"The Fritzes do not challenge the trial court's findings of fact in support of emotional distress damages. These include that the Bloors suffered from anxiety and discomfort as a result of the loss of their home, personal effects, and keepsakes. Ed Bloor experienced symptoms of depression, his sister noticed changes in his personality, and he blamed himself for what had happened and felt like he had let his family down. Eva Bloor also experienced anxiety, resulting in a trip to the emergency room because she thought she was having a heart attack. A doctor diagnosed her with anxiety and panic attacks and prescribed medication to reduce her anxiety. The trial court did not err in awarding emotional distress damages."

Once again, unlike Smith, Moss gets his hedonics into the rationale of the Court, and is approved for an amount of $10,000, but this remedy is disclosed as a "punitive damage" rather than either "hedonic damage" or "emotional distress damage." We never learn whether the amount of hedonic damage as calculated by Moss is too high, but, owing to the conclusion of the court and its moot award of $10,000 in punitive damages, the action suggests, along with attorney fees, that the amounts either awarded in attorney fees and estimated for emotional distress by the expert was considered too high, especially as your author has yet to see a hedonic damage calculation as low as $10,000. Smith, for example, goes after an amount described by one defense counsel as a search for "a hedonic damage bonanza" coupling credit damage and credit expectancy damages to an oversized hedonic damage award request. The presumption here in *Bloor* is economic expert Moss did the same as Smith in requesting an oversized hedonic damages award only to have the trial and appeals court defer his analysis and claim by recognizing emotional distress as being taken care of as a "punitive damage." [9]

This brings our case analysis to Stan V. Smith. I won't examine all six of his cases, examining instead one motion and one decision as a sampling of the Smith technique and methodology which the courts have universally taken a negative stand.

Anastasacion v. Credit Service of Logan (D. UT 2011)

This case is an amended memorandum decision and order granting in part and denying in part Defendant's *Motion in Limine* to exclude the testimony of Stan V. Smith. Judge Stewart denied a motion to exclude testimony of Stan V. Smith regarding loss of credit expectancy and claims based on "time spent trying to resolve problems with the credit reporting agency" based on insufficient facts and speculation, but allowed the defendant to raise further objections at trial. Judge Stewart excluded Stan Smith's testimony based on hedonic damages arising from credit problems based on the fact that there has been no physical injury or loss of life.

Judge Stewart writes: "Finally, with respect to Dr. Smith's testimony regarding reduction in the value of Plaintiff's life, or hedonic damages, the Court will grant Defendant's Motion. Plaintiff argues in her Reply that his evidence should be admissible, arguing that Dr. Smith is extremely qualified, that his testimony is based on reliable economic and scientific methods, and that it has received extensive peer review and acceptance. Plaintiff further states that hedonic damages are 'used by every federal regulatory agency.' However convincing these arguments may be, they do not change the fact that hedonic damages are used to approximate the loss of the value of life, and therefore are used in cases involving death or injury. As Plaintiff herself states, when 'every federal regulatory agency' used hedonic damages, it is 'in analyzing the potential impact to life or limb.' Furthermore, the three Tenth Circuit cases that have mentioned hedonic damages all involve either physical injury or loss of life. [10] As Plaintiff has not suffered the loss of life or limb, testimony regarding hedonic damages will not assist the trier of fact. Therefore, the Court will grant Defendant Motion with respect to this testimony."

Other than for mortgage expense and a car loan, where sufficient facts *and not speculation* would have to be presented at trial, the larger portions of Dr. Smith's quantification of credit damage for Ms. Anastasion was not admissible.

Lauer v. CSR Credit Services, Inc. (Defense Motion) 2010 WL 3263271 (S.D. 2010)

This case presents a thorough and detailed review of the credit damage issue with cases and peer review articles cited in abundance by J. Anthony Love of King & Spalding LLP of Atlanta, Georgia at the direction of the court and Judges Barker and Magnus-Stinson. Although there was a stipulated dismissal of the expert testimony, the case settled without any record of amount changing hands. Other than for marginal comments, no opinion is archived for the Judges.

Plaintiff Lauer designated Stan Smith as an expert in an attempt, writes Mr. Love, "to turn this small credit reporting case into a high-six-figure hedonic damages bonanza."

Expert Smith parsed three different kinds of damages: (1) lost credit expectancy; (2) the value of time spent on situation; and (3) hedonic damages or reduction in value of life. Through extensive argument, Mr. Love shows that hedonic damages can be rejected for four reasons and that situational and credit expectancy also for four reasons.

Hedonic damages were rejected because: (1) Plaintiff Lauer never pleaded that he was seeking hedonic damages; (2) Smith's hedonic damages opinion are not reliable under *Daubert or Kumho Tire*; (3) Smith's opinion on hedonic damages are not helpful to juries; and (4) Courts routinely exclude Smith's testimony on hedonic damages.

Value of time on situation and credit expectancy were rejected because: (1) Laurer never pleaded he was seeking damages from his time spent on the situation; (2) Smith is lacking in qualifications to express an opinion on these two matters; (3) Smith's opinions on these matters are not reliable under *Daubert* or *Kumho Tire*; and (4) damages for these two matters are not recoverable under FCRA legislation.

Mr. Love concludes: "For all these reasons, CSC, Equifax, and EIS respectfully request that this Court enter an order excluding Smith's testimony as to 'hedonic damages' (loss of value of life), 'loss of credit expectancy,' and 'value of time spent on the situation.'"

Since the Court requested this lengthy opinion from Mr. Love, the Court acceded. Of all the troubling eight reasons for rejecting Dr. Smith's expert testimony, maybe the most disconcerting is the correct conclusion that "Courts routinely exclude Smith's testimony on hedonic damages." Dr. Smith's failure to identify the cause of the loss of credit as an issue requiring the Plaintiff to correspond with the credit reporting agency messaging an incorrect credit transaction(s) (whether owing to identity theft or plain and simple typographic error) and his leap into loss of value of life is obviously a maneuver credit damage Courts are reluctant to allow. Just because you can't buy a washing machine on credit from Sears owing to a credit reporting error, disconcerting as that is, doesn't lead to a demonstrable loss of value of life in

the millions of dollars. It just doesn't. The Courts are uniformly asking Dr. Smith to give up the whole hedonic mess, but he persists anyway. [11]

To the extent that forensic economics is at the conjunction of economic theory and state and federal court rulings, it could be said Dr. Smith refuses to acknowledge the second while having little understanding of the first. Once again, owing to dismissals, the undisclosed settlement award here had more to do with violations of federal law than with any damage calculations by the forensic economist.

3. Summary Judgment

Credit expectancy is not a valid claim in all states. In the state of Minnesota, in *Reed v. CSC Credit Services, Inc. et al.* (D. MN 2004), the court had to make an adjustment for the trier of fact to even hear the credit expectancy damage claim. "Plaintiff's final claim alleges that Providian interfered with his credit expectancy. While Minnesota does not recognize a cause of action for interference with credit expectancy, courts have read such claims as pleading interference with economic expectancy, which is recognized in Minnesota. *See Mattice v. Equifax,* 2003 U.S. Dist. LEXIS 10162, 2003 WL 21391679, at (D. Minn. June 13, 2003). However, *Mattice* was decided on defendant's motion to dismiss and the court simply held that plaintiff had stated a cognizable claim. *See* 2003 U.S. Dist. LEXIS 10162. Here, construing plaintiff's claim as interference with economic expectancy does not save it from summary judgment, because plaintiff fails to present evidence of harm and causation, which are essential elements of the claim. *See H. Enterprises Int'l., Inc. v. General Elec. Capital Corp.,* 833 F. Supp. 1405, 1418 (D. Minn. 1993) (citing *Gits v. Norwest Bank Minneapolis,* 390 .W.2d 835, 837 (Minn. Ct. App. 1986)). Therefore, summary judgment in favor of Providian is also granted as to this claim."

The concept of summary judgment takes us into a more pragmatic understanding of credit damage and credit expectancy damage claims. Most claims are dismissed in summary judgment in favor of the defense. Why? The simplest answer is in the form of six connected propositions. I begin the first proposition with a great quote from a prominent forensic economist. 1) "Most credit damage cases are crap," so that 2) most credit damage cases are dismissed in summary judgment, because 3) most Plaintiff attorneys do not parse correctly the requirements of Fair Credit Reporting Act 15 USC §1681 (FCRA), the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691, et seq. (ECOA), the Fair

Debt Collection Practices Act (FDCPA), and the Federal Consumer Protection Act (FCPA), or the state equivalents of same, and, therefore, 4) the case gets dismissed through requesting a damage, such as credit expectancy or hedonics, not permitted under federal and/or state credit laws, so that 5) FE damage quantifications are ill-conceived at the front-end in matters of law, and 6) where the attorney has gotten the FE over this hurdle of matter of law, the quantification the FE makes is ill-conceived in using a methodology unacceptable to the courts.

A number of defense motions for either dismissal of expert testimony or summary judgment are noteworthy. I have already examined two dismissals the handiwork of economic expert, Stan V. Smith, and below provide a list of ten sample credit damage cases where a summary judgment was decided in favor of the defendant. They are all held in Federal courts indicating the predominance of federal laws in rulings against plaintiffs and for defendants in credit damage and credit damage expectancy claims.

- Thomas Guzek And Susan Guzek V. Wells Fargo Bank, N.A., And Federal Home Loan Mortgage Corp., United States District Court For The Eastern District Of Missouri, Eastern Division, 2013 U.S. Dist. Lexis 3936, Judge Audrey G. Fleissig, Decided, January 10, 2013
- Kamlesh Banga V. National Credit Union Administration, Equifax Information Services, Llc, United States District Court For The Northern District Of California, 2009 U.S. Dist. Lexis 93449, Judge Maxine M. Chesney, Decided, October 6, 2009
- Patricia Diane Meeks V. Murphy Auto Group, Inc. D/B/A Toyota Of Winterhaven, United States District Court For The Middle District Of Florida, Tampa Division2010 U.S. Dist. Lexis 132693, Judge Thomas B. Mccoun Iii, Decided, December 15, 2010
- Brenda Faith Campbell V. Experian Information Solutions, Inc., United States District Court For The Western District Of Missouri, Central Division, 2009 U.S. Dist. Lexis 106045, Judge Nanette K. Laughrey, Decided, November 13, 2009
- Shirley Page V. Fifth Third Bank, United States District Court For The Eastern District Of Missouri, Eastern Division, 2009 U.S. Dist. Lexis 65435, Judge Stephen N Limbaugh, Jr., Decided, July 29, 2009
- Avdo Hukic V. Aurora Loan Services And Ocwen Loan Servicing, United States Court Of Appeals For The Seventh Circuit, Northern District Of Illinois, Eastern Division, 588 F.3d 420; 2009 U.S. App. Lexis 25472, Judge Virginia M. Kendall, Decided, November 20, 2009
- Doris M. Gohman V. Equifax Information Services, Llc, United States District Court For The District Of Minnesota, 2005 U.S. Dist. Lexis 26472, Judge David S. Doty, Decided, July 21, 2005
- Penny Lee Anderson And Russell D. Anderson, Sr., V. Trans Union, Llc; Experian Information Solutions, Inc.; Csc Credit Services, Inc.; And Equifax, Inc., D/B/A Equifax Information Services, Llc, United States District Court For The Western District Of Wisconsin, 2004 U.S. Dist. Lexis 24219, Judge Barbara B. Crabb, Decided, November 24, 2004
- Phillip Sheridan Danielson V. Experian Information Solutions Inc.; Equifax, Inc. D/B/A Equifax Information Services, Inc.; Trans Union Llc; Csc Credit Services Inc.; And Aurora Loan Services, Inc., United States District Court For The District Of Minnesota, Judge Joan N. Ericksen, Decided, July 30, 2004
- Evelyn Kettler V. Csc Credit Service, Inc., Trans Union L.L.C., Experian Information Solutions, Inc., Equifax, D/B/A/ Equifax Information Services, Inc., Household Bank, And Washington Mutual Bank, Fa, United States District Court For The District Of Minnesota, 2003 U.S. Dist. Lexis 14424, Judge Paul A. Magnuson, Decided, August 12, 2003

4. Conclusion

In credit damage and credit expectancy case law, there is no hedonic damage bonanza to be found. Plaintiff attorneys misinterpret federal laws as they relate to credit damage and credit damage expectancy claims, and the economic expert witnesses quantifying those claims have for the most part adopted a methodology unacceptable to most courts. Unless the quantification is grounded in an actual loan that is demonstrably proven to have been overpriced owing to the credit damage actions of a defendant, there is only speculation to any so-called interference. As to the value of the time lost in communicating with credit-related companies, the Court considers it mandatory that in your own interest you would exercise this effort even if non-reimbursable. [12] Lastly, hedonic damages have no place in credit damage and credit expectancy damage claims.

Endnotes

1. Stan V. Smith, David A. Smith, and Stephanie R. Uhl, "Credit Damage: Cause, Consequences, and Valuation," *Forensic Rehabilitation and Economics: a Journal of Debate and Discussion*," volume 4, number 1, 2011, pp. 27–32.

2. Thomas A. Climo, "Response to Credit Damage: Causes, Consequences, and Valuation," *Forensic Rehabilitation and Economics: A Journal of Debate and Discussion,* volume 4, number 2, 2011, pp. 89-98.

In *Forensic Rehabilitation and Economics: A Journal of Debate and Discussion,* volume 5, number 1, 2012, pp. 75-76, there exists a rejoinder by Smith, Smith, and Uhl to my rebuttal entitled: "A Reply to Mr. Climo's Credit Damage Comment." Unfortunately, their short paper is not a serious contribution to the small literature on the credit damage and credit expectancy topic.

3. *Mechanics' Bank against Gorman*, SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT, PHILADELPHIA, 1844 Pa. LEXIS 192, Decided, December 1844.

4. *Guzek* is not the first instance of a trier of fact mistaking an actual damage from an actual event with the use of punitive damages as its rubric. See note 9 below.

5. Two sides to every issue, I cite here the most visible proponent of hedonic damages with its biggest critic:

Michael L. Brookshire and Stan V. Smith, *Economic/Hedonic Damages,* January 2008, available at: http://www.hedonicdamages.com/Assets/Documents/Book/intro.pdf.

Thomas R. Ireland, "Legal Decisions Involving Hedonic Damages from 2001 to 2012," draft date April 17, 2012, available at http://www.umsl.edu/~irelandt/Hedonic2001-2012.pdf.

6. *Eddie Bloor and Eva Bloor v. Robert A. Fritz and Charmaine A. Fritz, et al.*, Court of Appeals, State of Washington, Division 2, 2008 Wash. App. LEXIS 743, Judge J. Armstrong, April 1, 2008, Decided. Expert for Plaintiff: Robert Moss.

7. *Anastacion v. Credit Service of Logan, Inc.*, 2011 U.S. Dist. LEXIS 1126271 (D. UT 2011); *Lauer v. CSC Credit Services, Inc.*, (Trial Motion), 2010 WL 3263271 (S.D. IN 2010); *Deborah Tamburri v. Suntrust Mortgage, Inc., June 2013; William L. Allen, et al. v. Bank of America, N.A., et al., March 2013; Robert Smith, et al. v. Dwight Jenkins, et al.*, 2011; *Patricia Diane Meeks v. Murphy Auto Group, Inc. dba Toyota of Winterhaven*, 2010

8. A wider discussion on this and the other cases illustrated here as well as a number of other useful cases in the area of credit expectancy damages is executed in a forthcoming paper by the author: Thomas A. Climo, "Credit Expectancy Damages — A New Six Figure Hedonic Bonanza?" *Journal of Legal Economics*, forthcoming.

9. Punitive damages are intended to punish egregious behavior of the defendant while emotional distress damages would be based on the harm to the plaintiff. However, since there is no separate identification of an emotional distress damage number, unlike the ones for credit expectancy, expenses, and attorney fees, it appears here that the Judge connected emotional distress through a punitive damage award.

10. *Baron ex rel White vs. Sayre Memorial Hospital, Inc.*, 221 F.3d 1351 (10th Cir. 2000); *Smith vs. Ingersoll-Rand Co.*, 214 F.3d 1235 (10th Cir. 2000); *City of Hobbs vs. Hartford Fire Ins. Co.*, 162 F3s 576 (10th Cir. 1998).

11. In the state of Utah alone, for example, in addition to Amy Anastasion in the second case above, there is: *Kathryn Anne Cook v. Stephen W. Knight*, Second Judicial District Court, Davis County, Utah, Case nos. 040604214 and 050602844, Judge Thomas L. Kay, Decided Aug. 16, 2010; *Patrick L. Campbell v. Walter B. Kunz*, Fourth Judicial District Court, Utah County, Utah, Case no. 040401275, Judge David N. Mortensen, Decided Dec. 7, 2006; *Jamie Pennington v. Salt Lake Regional Medical Center et.al.*, Third Judicial District Court, Salt Lake County, Utah, Case no. 090907103, Judge Kate A. Toomey, Decided Dec. 20, 2012.

12. This need for action on the part of a plaintiff to a credit damage or credit expectancy damage claim is no better illustrated than in *Phil Rosequist vs. Washington Mutual Bank FA* (District Court, Clark County, NV, case no. 07A536296). Despite proven evidence of a credit reporting error on the part of WAMU, in a decision made on September 8, 2008, Judge Valarie Adair looked a scoff at Mr. Rosequist's credit damage claims since no proof was ever provided by Mr. Rosequist that he actually contacted WaMu or Experian to correct the credit reporting error. This absence of action took precedence over the belated notice of correction filed independently by WaMu to Experian. Negligence or inattentiveness and inaction to a credit denial are an important part of judicial thinking.

Author Notes

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