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## Third Circuit Finds No Exception Under FCRA for a Furnisher's Failure to Investigate "Frivolous" Indirect Dispute



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The Third Circuit Court of Appeals overruled a district court's reading of an exception into §1681s-2(b) of the Fair Credit Reporting Act (FCRA) that would allow a furnisher discretion to refuse to investigate an indirect dispute it deems frivolous or irrelevant. Instead, the Third Circuit held that a furnisher must investigate even frivolous indirect disputes — disputes submitted by a consumer first to a consumer reporting agency (CRA) that are then transmitted by the CRA to the furnisher. A copy of the decision can be found [here](#).

As background, the plaintiff alleged he discovered on his consumer report that a fraudulent account with a cable company had been opened in his name. The plaintiff directed his counsel to file a direct dispute with the cable company requesting that it investigate and report the account to the CRAs as disputed. The cable company responded by requesting the plaintiff to provide several supporting documents. The plaintiff did not provide the documents and the account was referred to a collection agency and reported to the CRAs as delinquent. The plaintiff then disputed the account with the CRAs. The CRAs forwarded the dispute to the cable company for investigation. The collection agency received the indirect dispute, updated the plaintiff's address in the system, and confirmed the account name and social security number, but did not investigate the fraud claim. The plaintiff contended that based on the account notes and the collection firm's testimony, the investigation of the plaintiff's dispute lasted for 13 seconds. The plaintiff filed suit alleging the

investigation was inadequate under FCRA as well as asserting claims under the Fair Debt Collection Practices Act.

The district court granted summary judgement in the defendants' favor holding that the collection agency had no duty to investigate the plaintiff's indirect dispute because the plaintiff failed to provide the additional information previously requested. Reviewing the district court's decision de novo, the court of appeals disagreed that such an exception existed under the FCRA for furnishers' investigations of indirect disputes.

The plaintiff's position was supported by an amicus brief submitted by the Consumer Financial Protection Bureau and Federal Trade Commission. The regulators argued that the court should reject the district court's exception holding that furnishers need not investigate frivolous indirect disputes because the statutory language requires furnishers to investigate **all** indirect disputes — arguing that Congress would have written in an exception for frivolous disputes if they intended to include one. The amicus brief claimed that the FCRA already protects furnishers from frivolous disputes by allowing CRAs to determine whether a dispute is frivolous prior to notifying a furnisher.

Under § 1681s-2(b) of FCRA, after receiving notice of an indirect dispute from a CRA, the furnisher must investigate the disputed information, review all relevant information provided, and report the results of the investigation to the CRA. The court of appeals found that, unlike direct disputes, the FCRA does not provide an exception for furnishers to decline to investigate indirect disputes deemed to be frivolous:

The FCRA is not ambiguous on this point. It expressly states that if a [CRA] 'reasonably determines that [an indirect] dispute . . . is frivolous or irrelevant,' it is not required to continue with its investigation. 15 U.S.C. § 1681i(a)(3)(A). Similarly, when a furnisher receives a direct dispute, the FCRA clearly provides that the furnisher is not required to investigate so long as it 'reasonably determines that the dispute is frivolous or irrelevant.' Id. § 1681s-2(a)(8)(F)(i). The statute is structured such that, in these parallel provisions, the party that first receives the dispute from the consumer retains explicit discretion to discontinue its investigation should the consumer's dispute appear frivolous or irrelevant. Meanwhile, Section 1681s-2(b), which governs 'duties of furnishers of information upon notice of a dispute' from a [CRA], charges furnishers with a duty to investigate indirect disputes forwarded to them by the agencies, without providing for any similar exception.

The court of appeals found that enforcing the FCRA according to its terms would produce "no unreasonable results." For direct disputes, furnishers can perform a preliminary review for frivolousness. As for indirect disputes, Congress provided a "filtering mechanism" by setting up the CRAs to terminate their investigation of a dispute if they reasonably determined it was frivolous or irrelevant. For these reasons, the court of appeals concluded that the collection agency had a duty to investigate the plaintiff's indirect complaint, regardless of his purported failure to supplement with additional information, or the fact that he had previously submitted a direct dispute that had been deemed frivolous. The court reversed the district court's grant of summary judgment to the defendants and remanded the case for evaluation of the reasonableness of the collection agency's investigation into the plaintiff's indirect dispute under the FCRA.

While the court ultimately sided with the plaintiff's position on the furnisher's obligation to investigate all indirect disputes, it stated in a footnote that it declined to comment on the argument that a CRA has no duty to notify a furnisher of an indirect dispute that the CRA has deemed frivolous. In other words, while the court recognized that an indirect dispute deemed frivolous by a CRA pursuant to § 1681i(a)(3)(A) may abrogate the CRA's responsibility to investigate further, the court declined to opine on whether that determination also abrogated its responsibility to forward the indirect dispute to a furnisher pursuant to § 1681i(a)(2).



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