

## NOTES AND CASE LAW RELATED TO FCRA/ACTUAL DAMAGES

While perhaps not often sought in personal injury cases, recovery for the varying types of harm which emanate from a damaged credit rating is well-recognized in other areas of the law which permit the recovery of **actual damages**.

**The Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. and caselaw surrounding it is one such area, but it is by no means alone. The U.S. Supreme Court has recognized that the concept of actual damages or actual injury embraces a far broader scope of harm than just direct pecuniary loss. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)(actual injury in defamation case was not limited to out-of-pocket loss, and included loss of reputation in the community, personal humiliation and mental anguish and suffering; see also *Carey v. Piphus*, 435 U.S. 247 (1978)(actual injury includes a variety of psychological harms as well as pecuniary loss).**

Your client should be entitled to recover pecuniary losses stemming from any denials of credit or lost credit opportunities, and such amounts can be significant. See *Bach v. First Union Nat'l Bank*, No.04-3899, 2005 WL 2009272 (6<sup>th</sup> Cir. 2005) (affirming jury award of \$400,000 in compensatory damages for lost credit and mortgage opportunities and damage to plaintiff's reputation for creditworthiness, but remanding of punitive damages award of \$2,628,600); see also *Philbin v. Trans Union Corp.*, 101 F.3d 957 (3d Cir. 1996)(credit denial letters sufficient proof of actual damages to defeat summary judgment). In cases involving credit denials or lost credit opportunities, pecuniary injury may, for example, be established through proof of payment of elevated interest rates, and/or excessive points or other fees that that your client had to pay due to her lowered credit rating.

**However, it not necessary that your client actually be denied credit or lose out on a specific credit opportunity in order to recover for credit rating damage. See *Cushman v. Trans Union Corp.*, 115 F. 3d 220 (3d. Cir. 1997);**

*Guimond v. Trans Union Credit Information Company*, 45 F.3d 1329 (9<sup>th</sup> Cir. 1995). Even without pecuniary or out-of-pocket loss, your client may recover actual damages for **the mere injury** to her **reputation or creditworthiness** caused by the delinquencies appearing on her credit report. *Boris v. Choicepoint Servs., Inc.*, 249 F. Supp. 2d 851 (W.D. Ky. 2003) (\$100,000 in actual damages based in part on damage to plaintiff's reputation);

*Dalton v. Capital Assoc.*, 257 F.3d 409, 418019 (4th Cir. 2001); *White v. Imperial Adjustment Corp.*, 2002 WL 1809084 (E.D. La. 2002)(damages for injury to reputation and creditworthiness are available even without proof of pecuniary damages).

Your client may also recover actual damages in the form of **emotional and mental distress and humiliation** due to having a negative credit rating and the stigma accompanying, even if she has no pecuniary harm. See *Cushman, supra*. **The term "actual damages" has been interpreted to include recovery for emotional distress and humiliation. *Johnson v. Department of Treasury, I.R.S.*, 700 F.2d 971 (5<sup>th</sup> Cir. 1983).**

These injuries are not just legally compensable, they often significant. Given that we live in a world where credit reports are relied upon more heavily than ever in connection with employment decisions, mortgage and credit applications, and insurance underwriting (think of all those GEICO ads), juries from around the country have not hesitated to award significant sums to consumers based exclusively upon damage to their **credit reputation and the ensuing emotional distress**. *See e.g. Jorgeson v. TRW, Inc.*, C.A. No. 96-286 (D. Or. 1998) (\$600,000 for compensatory damages for emotional distress);

*Valentine v. Equifax Information Services LLC, et al.* U.S. District Court (Or.) Case No. 05-CV-0801-JO (\$200,000 for emotional distress damages only);

*Zotta v. Nations Credit*, (E.D. Missouri 2003) (\$87,500 for emotional distress only);

*Johnson v. MBNA* (D. Virginia 2002) (jury award of \$90,300 emotional distress);

Fairly recently our firm obtained an \$800,000 jury verdict (since remanded) in the Eastern District of Pennsylvania in a credit reporting case where the damages were based entirely on non-economic damages, including damage to our client's credit reputation, her significant emotional distress and humiliation. *See Cortez v. Trans Union, LLC*, Civil No. 05-5684 (E.D. Pa., April 26, 2007).

Crabill v Tansunion

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