

<http://www.strasburger.com/blogs/353/obtaining-a-consumer-report-in-preparation-for-litigation-is-not-a-permissible-purpose>

Slantis v. Capozzi & Assocs., P.C., 2010 U.S. Dist. LEXIS 124198 (M.D. Pa. Aug. 10, 2010)

Facts: Plaintiff claimed that a credit check performed by Defendant was not performed for a permissible purpose in violation of the FCRA. Defendant counter-claimed against Plaintiff claiming the credit check was permissible and Plaintiff brought her claim in bad faith and for the purposes of harassment. The Court found that obtaining a consumer report in preparation for litigation is not a legitimate business need pursuant to § 1681b(a)(3)(F)(i). Because Defendant did not perform any research on what would constitute a permissible purpose for conducting the credit check and did not obtain the permission of Plaintiff to obtain her consumer report, the Court found that summary judgment was proper for Plaintiff and that Defendant violated the FCRA. The Court further held that Defendant's counterclaim failed because Plaintiff's claim had merit.

Willful Non-Compliance. Plaintiff moved for summary judgment on the issue of Defendant's willfulness in violating the FCRA when conducting a credit check on her during the course of litigation. Pursuant to § 1681o, if a defendant is found to be negligent in its violation of the FCRA, a plaintiff can recover actual damages, litigation costs, and reasonable attorney's fees. For a willful violation, § 1681n provides that a plaintiff can recover actual damages, or damages of at least \$100 or as much as \$1000; or the greater of \$1000 and actual damages, as well as punitive damages, litigation costs, and reasonable attorney's fees. Willful non-compliance will be applied if the defendant knowingly and intentionally committed an act in conscious disregard for the rights of others. The Court held that the little evidence on Defendant's state of mind was highly fact-specific and best left to the jury. The Court further held that the summary judgment evidence was not conclusive enough to merit judgment as a matter of law for either party.

Permissible Purpose. In order to establish a violation of the FCRA for obtaining a credit report without a legitimate business need, Plaintiff must prove that (1) there was a consumer report, (2) Defendant used or obtained it, (3) Defendant did so without a permissible statutory purpose, and (4) Defendant was negligent or willful in doing so. Defendant contended that it obtained Plaintiff's consumer report for a legitimate business need under § 1681b(a)(3)(F)(i), which allows a consumer report to be furnished "in connection with a business transaction that is initiated by the customer." This case is an offshoot of a lawsuit between Plaintiff and a former employer in which Defendant represented Plaintiff's former employer. Defendant admitted that it obtained Plaintiff's consumer report without Plaintiff's permission in order to ascertain if a counterclaim against Plaintiff would be financially viable. The Court found Defendant's case law to be distinguishable and that the Third Circuit overwhelmingly supported the proposition that obtaining a consumer report in preparation for litigation is not a legitimate business need under the FCRA.

1681b concerns the purposes for which they received your report and has nothing to do with timing. The purpose is a discoverable issue of fact. Where timing comes into play will only be if you do not have what is called a colorable claim. If they pulled your report 9 month before filing suit, it is highly unlikely it had anything to do with litigation. If they pulled a week before filing or after the suit, then it was likely directly related to litigation.

The FTC and the courts have repeatedly stated that litigation is not a permissible purpose and therefore a violation.