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The Tassel is Worth the Hassle: Putative Class Action Dismissed after Court Finds that Accurately Reported College Enrollment Dates and Degree-Conferral Status Are Not Adverse Information

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15 U.S.C. 1681c of the Fair Credit Reporting Act ("FCRA") governs the requirements for information contained in consumer reports. Section 1681c(a) provides that there are six categories of information that are generally precluded from reporting unless they fall under an exception described in section 1681c(b). The six categories of information are: (1) bankruptcy proceedings; (2) civil suits, judgments, and arrests; (3) paid tax liens; (4) accounts sent for collection or charged to profits and loss; (5) any other adverse item of information, other than records of convictions of crimes, which antedates the report by more than seven years, and (6) contact information of medical providers. *See* 1681c(a)(1)-(6).

In *Jenkins v. Carco Group*, 2018 U.S. Dist. LEXIS 153382 (D.C. K.S., Sept. 10, 2018) (*"Jenkins"*), De'Leah Jenkins ("Plaintiff") alleged, in a putative class action, that Carco Group, Inc. ("Carco"), a consumer reporting agency ("CRA"), was negligent and violated section 1681c(a)(5) of the FCRA by reporting "adverse" information about her educational background that predated the report by more than seven years.

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By way of background, in connection with her employment, Plaintiff self-reported to Synchrony Financial ("Synchrony") that she attended Kansas City Kansas Community College ("KCKCC") from August 2007 to December 2010 and earned a mortuary science degree. Carco issued a report for its client, Synchrony, which stated that Plaintiff was enrolled at KCKCC for a shorter period of time and no degree was conferred. On the report, Carco labeled the discrepancy between the information Plaintiff self-reported and the information KCKCC reported to be "adverse." In her suit, Plaintiff alleged that Synchrony took adverse action against her based on Carco's reporting of her college attendance and degree-conferral status (or lack thereof).

Notably, Plaintiff did not allege that she actually received a degree from KCKCC (or otherwise dispute the accuracy of the information Carco reported). Instead, she argued that her educational information should not have been included in the report because it was outside of the seven year period. Carco filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

Plaintiff's claims did not make the grade.

The Court granted Carco's motion to dismiss holding that, "as a matter of law, []college attendance dates and degree-conferral status are not 'adverse information' under the plain language of section 1681c(a)(5)." *Jenkins* at *4-5.

The Court also found that Carco's "use of the label 'adverse' [did] not automatically equate to a statutory violation" and that the Court had to examine "the statutory language and other relevant authority to determine

whether the information [Carco] reported [was] 'adverse' within the meaning of section 1681c(a)(5)." *Id.* at *7.

While Plaintiff was focused on Carco's use of the term "adverse" in reporting the discrepancy between the information Plaintiff and Carco reported, the Court was less focused on Carco's terminology and more focused on the nature of the underlying information.

The Court held, that the true question is not, "whether the information [Carco] reported was contrary to what Plaintiff reported, *but* whether *the underlying information is inherently contrary or harmful* to Plaintiff." *Id.* at *9. In other words, Carco's characterization of the discrepancy as "adverse" did not transform the otherwise neutral attendance and degree information from non-adverse to adverse for purposes of section 1681c(a)(5). *Id.*

The Court considered the other five categories of information subject to reporting limitations in section 1681c(a)(1)-(4), (6) (discussed above) and noted that the information limited in those categories is fundamentally different than the information Carco reported to Synchrony, because they aim to limit the disclosure of inherently private or harmful information.

Citing *Robinson v. Shell Oil Co.,* 519 U.S. 337, 340, 11 S. Ct. 843, 136 L. Ed. 2d 808 (1997), the Court continued that the term "adverse information" read within the context of section 1681c "also supports the conclusion that its meaning under section 1681c(a)(5) is plain and unambiguous and does not include college attendance dates and degree-conferral status." *Id.*

In reaching its decision, the Court also noted that the legislative intent was to ensure fair and accurate credit reporting, and if an interpretation of section 1681c(a)(5) consistent with that intent is available, the Court must avoid any alternative interpretation that would yield an absurd result. *Id.* at *10-11, citing *Safeco Ins. Co. of Am. v. Burr,* 551 U.S. 47, 52, 127 S. Ct. 2201, 167 L. Ed. 2d 1045 (2007); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575, 102 S. Ct. 3245, 73 L. Ed. 2d 973 (1982).

The Court went on to state that "[v]erification of college attendance dates and degree-conferral status by CRAs serves a valuable function. Many employers rely on CRAs for this service as part of their employee interview screening and background check process." *Jenkins* at *11. Further, the Court noted that if the reporting of college attendance dates and degree conferral statuses were prohibited when the information predated the report by more than seven years, employers could only verify information about an applicant's educational history if the education was within the previous seven years. Plus, it would allow applicants whose education information "predated the report by seven years to falsify their information with impunity." *Id.*

In conclusion, the Court held[1] that Plaintiff's suit could not survive because Plaintiff's proposed interpretation of the statute – "one that would both prevent CRAs from providing a valuable service and protect applicants who falsify information" – would yield an absurd result.

Class Dismissed.

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[1] The Court also cited three informal staff opinion letters written in 1998 from the Federal Trade Commission ("FTC") and an FTC summary report, in reaching the Court's conclusions" *FTC, Staff Opinion Letter to Lee Seham,* 1998 WL 34323743, at *1 (Apr. 17, 1998); *FTC, Staff Opinion Letter to Michael Rosen*, 1998 WL 34323763, at*3 (June 9, 1998); *FTC, Staff Opinion Letter to Barry Nadell*, 1998 WL 34323718, at *1-2 (June 9, 1998).