THE HOLLAND LAW FIRM

IDENTITY THEFT AND FRAUD IN CONSUMER CASES

AGENDA

Kinds of ID Theft & Fraud

Defense Issues

Investigation

Affirmative Issues

TYPES OF FRAUD AND ID THEFT

TYPES OF ID THEFT AND FRAUD

ID Theft by nature

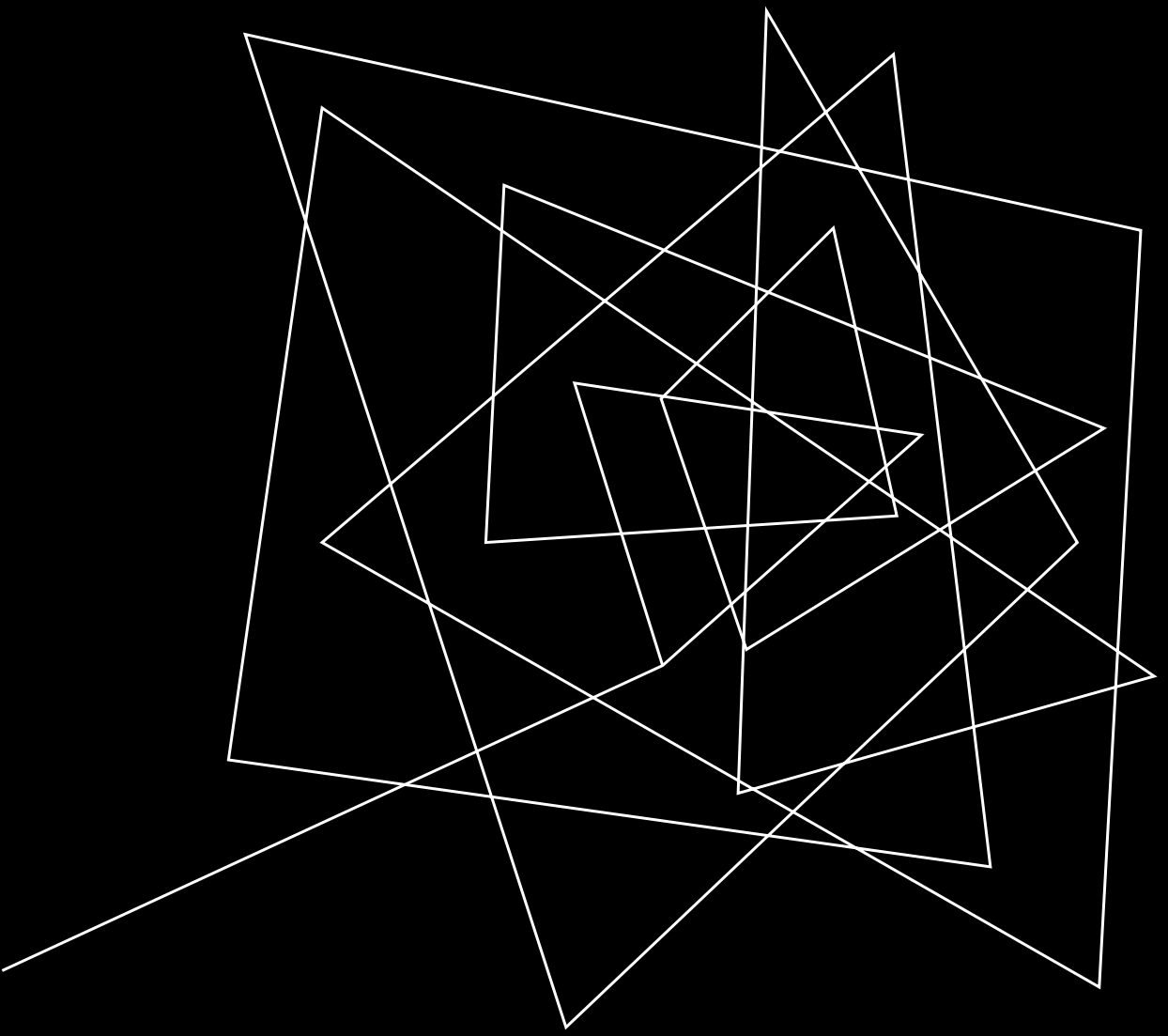
- New Account
- Account Takeover

ID Theft by perpetrator

- Stranger ID theft
- Familial ID theft

Not ID Theft

- Fraud by misrepresentations and tricks
- Mistaken Identity



DEFENSE ISSUES

HOW TO WIN AN ID THEFT DEFENSE

Law

15 U.S.C. 1643 (Truth In Lending Act)

Basic Contract Law

Agency Law

Burden and Standard of Proof

Facts

FTC ID theft report

Police Report

Forged Signatures – would it get you out of gym class?

Buying Gold Bullion in Idaho – where were transactions initiated? Were they typical for your defendant?

IP Addresses

TRUTH IN LENDING ACT (15 U.S.C. 1643)

Limits on Liability

(a)LIMITS ON LIABILITY(1)A cardholder shall be liable for the unauthorized use of a credit card only if—

(A)the card is an accepted credit card;

(B)the liability is not in excess of $50;

(C)the card issuer gives adequate notice to the cardholder of the potential liability;

(D)the card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 1637(b) of this title or on a separate notice accompanying such statement;

(E)the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise; and

(F)the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.

(2) For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

Burden of Proof

(b)BURDEN OF PROOF

In any action by a card issuer to enforce liability for the use of a credit card, the **burden of proof is upon the card issuer to show that the use was authorized** or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a), have been met.

(c)LIABILITY IMPOSED BY OTHER LAWS OR BY AGREEMENT WITH ISSUER

Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(d)EXCLUSIVENESS OF LIABILITY

Except as provided in this section, a **cardholder incurs no liability from the unauthorized use of a credit card**.

DEALING WITH COLLECTOR TACTICS

They Say:

1. I need a continuance to investigate these claims!
2. No Discovery in Small Claims! OR You can't have ___! It's beyond the scope of discovery!
3. Well, it's really the Defendant's fault, they should've read their statements!

You Say:

1. Plaintiff had plenty of time prior to trial, on notice as of Notice of Intent to Defend (NOID) or earlier if there were prior disputes/complaints.
2. Subpoenas *duces tecum* aren't discovery.
3. Plaintiff's burden to prove agency, and the requirements aren't met.

INVESTIGATION

DOCS YOU NEED (FROM CLIENT)

Clients may have no documents at all for the fraudulent account, but there are still steps you can take to investigate.

- FTC ID Theft Report
- Police Report (?)
- Credit Reports (ACR)
- Specialty Reports
- Example Signatures
- Statements showing fraudulent transactions
- Disputes done by client
- Responses to Disputes

- Proof of Address
- Travel Receipts

DOCS YOU NEED (FROM CREDITORS)

- Original Account Application
- Account Statements
- Correspondence with Defendant
- Results of Internal Fraud Investigation
- Creditor’s Red Flag Policies

CHALLENGING SITUATIONS

Familial ID Theft

- About half of cases are familial ID theft
- Thief has docs
- Client may reconcile with thief
- Client & thief often shared an address
- Client may have received a “benefit”
- CRAs & Banks more resistant
- Facts more complicated

Wire Transfer Cases

Wires are exempt from EFTA, only UCC claims.

Some approaches to get around this

Usually end up in arbitration

AFFIRMATIVE ISSUES

AFFIRMATIVE CLAIM ISSUES

Legal Issues

- Basis of Claim
  - FCRA, EFTA, FDCPA, MCDCA, MCPA, TILA
- Jurisdiction
- Standing (if federal)
- Arbitration (if account takeover)

Facts

Damages?

Sufficient Disputes?

Client Scoring?

STATUTES YOU SHOULD KNOW

Defense

TILA – 15 U.S.C. 1643

FCBA – 15 U.S.C. 1666

Attack

FCRA – 15 U.S.C. 1681 et seq

FDCPA – 15 U.S.C. 1692 et seq

EFTA – 15 U.S.C. 1693 et seq

MCDCA – Com. L. 14-201 et seq

MCPA – Com. L. 13-301 et seq

THANKS

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