

New Tools for Consumers in the Fight Against Identity Theft and Credit Report Errors



Linda Davis Friedland

In the wake of the Great Recession, which, according to the Bureau of Labor Statistics, began in December 2007 and ended in June 2009, a flurry of federal legislation was enacted to provide support for consumers. The Fair Credit Reporting Act, which became effective July 21, 2010, was amended to provide for “one-call fraud alerts.” Under this amendment, if you believe that you have become a victim

of identity theft, you may call a credit reporting agency, such as Equifax, Experian or TransUnion and provide proof of identity. After the credit reporting agency receives this call and proof of identity from you, it must include a fraud alert in your file, and provide this alert along with any credit score generated using that file, for a period of not less than 90 days. This is essential for protecting your credit in the future.

Consumers who believe they have become victims of identity theft should take the following steps:

Step 1: Place a fraud alert. Placing an initial fraud alert is free and should be provided to all three credit reporting agencies. This step is crucial because it will make it more difficult for the identity thief to open accounts in your name. The contact information for the three credit reporting agencies are as follows:

- Equifax: 1-800-525-6285 or www.equifax.com
- Experian: 1-888-397-3742 or www.experian.com
- TransUnion: 1-800-680-7289 or www.transunion.com

Step 2: Order Credit Reports. Contact all three credit reporting agencies again and explain that you have placed an initial fraud alert, that you would like to order a free copy of your credit report, and ask each credit reporting agency to show only the last four digits of your social security number on your report.

Step 3: Create an “Identity Theft” or “Credit Repair” File. Putting a stop to the fraud, and then repairing your credit, will be a time-consuming and arduous process. You will find that staying organized and maintaining detailed records will help you greatly. Your identity theft or credit repair file should contain a record of the dates you made calls to the three credit reporting agencies and include copies of all correspondence.

Step 4: Create an Identity Theft Report. This is a two-step process, the first of which is to create an identity theft affidavit, and the second is to file a police report. To prepare your FTC Identity Theft Affidavit, contact the FTC at 1-877-438-4338 or www.ftccomplaintassistant.gov. If you complete the form online, simply click “submit,” and then save the complaint reference number that appears afterward. Then, click on the “Click here to get your completed FTC Identity Theft Affidavit” link. Make sure you print or save your Identity Theft Affidavit because you will not be able to save or print it after you leave the screen. If you file your complaint with the FTC via telephone, ask for the complaint reference number and affidavit password. The FTC will then e-mail you a link so that you can obtain your Identity Theft Affidavit.

The next step is to file a police report. Bring the following items to your local police department: a copy of your FTC Identity Theft Affidavit; any proof of the theft you may have; a government-issued ID with a photo; and proof of your address, such as a pay stub, rental agreement or utility bill.

Ask for a copy of your completed police report and retain it in your identity theft or credit repair file. Specifically, make note of your police report number. This number will often be requested when you file disputes with merchants for various charges. Lastly, attach your FTC Identity Theft Affidavit to your police report and keep a copy of it in your file.

continued on page 2

in this issue

New Tools for Consumers in the Fight Against Identity Theft and Credit Report Errors	1-2
Google Glass: Use of Wearable Technology in the Workplace Creates Need for Updated Policies	2
Bill Would Allow Strip Searches for Misdemeanor Crimes	3
Immigration: The Effect of <i>Slyusa v. Holder</i> on the “Incredible” REAL ID Act	3
Office Locations (Please note: Our Sterling Heights office has relocated.)	4

New Tools for Consumers (cont.)

Step 5: Work to Repair Your Credit. Submit your FTC Identity Theft Report to credit reporting agencies, merchants, health care providers, and such as you work to repair your credit.

Identity theft is occurring more often, due in part to the recent data breaches with merchants, hospitals, and various websites. In next month's newsletter, look for an article on

signs that you may have become a victim of identity theft.

Linda Davis Friedland

Linda Davis Friedland is an attorney in our Livonia office where she concentrates her practice on commercial litigation, employment and labor law, corporate and business law, estate planning, utilities Law and municipal Law. She may be reached at (734) 261-2400 or lfriedland@cmda-law.com.

Google Glass:

Use of wearable technology in the workplace creates the need for updated workplace policies

Wearable technology is becoming more and more present in our technologically-based society. Google Glass is "smart eyewear" featuring a small computer built into a pair of glasses. Google Glass functions much like a smartphone, but users see a visual display in their line of vision and operate the device with voice commands. The glasses provide a hands-free way to be fully connected to technology at all times.

After being in production and testing stages for over a year, Google has now made the device commercially available to the public. Wearers are able to connect to social media, take photographs with only a wink, browse the internet, and send messages all without using their hands. Other wearables are also on the horizon. Both smart-watches and wearable automatic camera clips are publicly available. While this technology may be entertaining and fun for personal use, it provides interesting challenges when such devices are brought into the workplace, and businesses should consider updating their security and personnel policies.

Though wearable technology might be the way of the future, it presents inherent risks of intrusion into the workplace. Because Google Glass has photograph and video recording capabilities, often without others being able to perceive when a photo has been taken or a recording made, use of the device in the workplace can threaten the privacy of employees, data security, or even the disclosure of trade secrets. For example, a Glass user could record other employees without their consent, record discussions at meetings, take photographs of sensitive and confidential documents or images on computer screens, or photograph proprietary information.

Software and applications on the device also carry their own risks. Because the device works much like apps for smart-

phones, there is a risk of third-party transmission or interception of data that can carry security risks to sensitive information. Programs not officially sanctioned by Google could have spyware or malware that could leak information to untrusted sources and impair security systems.

Several companies and organizations have already assessed the use of Glass for security purposes: Las Vegas casinos have banned use of such technology, arguing that the use can violate state wiretapping laws if a recording is made without the other party's consent; Guantanamo Bay has banned the use of these devices after a reporter wore them to the facility; and the USAA has banned the use of Glass and other similar technology in the workplace.

Businesses should consider reworking their workplace policies and handbooks in order to account for the influx of wearable technology. Depending on your workplace, it may or may not be realistic to ban such technology outright. However, workplace rules should be in place about acceptable and unacceptable uses and should take into account the potential security threats that are involved.

Please contact CMDA to review and update your employee policies and handbooks.

Shannon A. Lozon

Shannon Lozon is an attorney in our Clinton Township office where she concentrates her practice on a variety of civil litigation matters, including municipal law, personal injury law, and employment law. She may be reached at (586) 228-5600 or slozon@cmda-law.com.

Bill Would Allow Strip Searches for Misdemeanor Crimes

In a 2012 decision, the Supreme Court evaluated the constitutionality of jail policies that required all inmates, including inmates suspected of minor offenses, to undergo routine strip searches prior to their admission to the general inmate population.

Several organizations comprised of jail officials, among others, submitted amicus curiae briefs in which they outlined the risks that accompany the admission of inmates to the general population. Deferring to their judgment and expertise, the Court concluded that the policies bore a reasonable relationship to “legitimate penological interests.” The Court reasoned that the policies provide jail officials with the means to detect and prevent the spread of contagious or communicable diseases, to identify and treat injuries that require immediate medical attention, to ascertain gang affiliation, and to prevent the introduction of contraband.

From that premise, the Court held that the policies struck an appropriate balance between the privacy of inmates and the security needs of jails. The Court declined to comment on the extent to which its holding would apply in circumstances where inmates are arrested without a warrant and detained without assignment to the general population. Thus, the Court’s holding, though amenable to a broad application,

may be subject to a narrow, yet-to-be-recognized exception.

Section 25a of the Michigan Code of Criminal Procedure may soon align with the Supreme Court’s decision. Section 25a prohibits jail officials from strip searching inmates arrested or detained for misdemeanor offenses or civil infractions absent probable cause to believe that they are concealing a weapon, a controlled substance, or evidence of a crime.

Senator Jones, a former jail administrator and sheriff, recently introduced a bill that would repeal Section 25a’s probable cause requirement and authorize jail officials to strip search inmates arrested or detained for misdemeanor offenses or civil infractions as a matter of course. The bill would leave Section 25a’s warrant requirement intact. According to Senator Jones, the Michigan Sheriff’s Association approached him to discuss the prospect of introducing the bill. Whether the bill will pass remains to be seen, but it will likely receive a vote in the fall session.

Lindsey A. Kaczmarek

Lindsey Kaczmarek, an attorney in our Livonia office, concentrates her practice on municipal law and civil litigation defense. She may be reached at (734) 261-2400 or lkaczmarek@cmda-law.com.

Immigration: The Effect of *Slyusar v. Holder* on the “Incredible” REAL ID Act



Sara E. Lowry

What was the exact date of your first hair cut? If you cannot remember and you are an asylum applicant, you may have just earned yourself a deportation order back to the country you were fleeing. Under the REAL ID Act of 2005 (Act), Immigration Judges (IJ) have an “incredible” amount of power and latitude when making credibility

determinations. With the implementation of the Act, any inconsistency in an applicant’s story is reason enough to earn a deportation order, whether or not the inconsistency went to the heart of the claim for asylum. An adverse credibility finding is the death blow to the applicant’s claims for asylum and any relief from removal, preventing such claims from being considered on their merits.

A recent decision coming out of the Sixth Circuit Court of Appeals has recognized the troubling precedent that has been set regarding credibility determinations. The Court in *Slyusar v. Holder*, spent a significant amount of time cautioning the IJs in their future credibility findings. The Court acknowledged the sweeping power the Act gives to the IJs, but placed special emphasis on the Court’s prior precedent in *Ren v. Holder*. The Court in *Ren v. Holder* noted that the power of the IJ is not the equivalent of a “blank check” enabling the IJ to, “in-

sulate an adverse credibility determination from the Circuit’s review of the reasonableness of that determination.”

The *Slyusar* Court expressed further concern for precedent that even if an omission or inaccuracy is categorized as de minimis, it may still support an IJ’s adverse credibility finding. By way of example, the Court observed multiple adverse credibility determinations that are often based on external factors not indicative of truthfulness. These decisions seem to be in conflict with the actual language of the Act requiring that IJ’s make credibility determinations considering the totality of the circumstances, and all other relevant factors.

The Sixth Circuit appears to be moving to a softer landing on judging an asylum applicant’s credibility. The final words of the *Slyusar* Court are used to urge the exercise of due care in evaluating inconsistencies when reaching a credibility determination. Attorneys and those who work with asylum applicants should keep an eye on future asylum opinions coming out of the Sixth Circuit. If the trend follows *Slyusar*, we should be on our way to correcting some of the absurdity of the Act.

Sara A. Lowry

Sara Lowry, an attorney in our Livonia office, concentrates her practice on municipal law, litigation, and immigration law. She may be reached at (734) 261-2400 or slowry@cmda-law.com.

Office Locations

MICHIGAN

Livonia

33900 Schoolcraft Road
Livonia, MI 48150
Telephone: 734.261.2400
Facsimile: 734.261.4510

Clinton Township

19176 Hall Road
Suite 220
Clinton Township, MI 48038
Telephone: 586.228.5600
Facsimile: 586.228.5601

Traverse City

400 West Front Street
Suite 200
Traverse City, MI 49684
Telephone: 231.922.1888
Facsimile: 231.922.9888

Grand Rapids

2851 Charlevoix Drive, S.E.
Suite 327
Grand Rapids, MI 49546
Telephone: 616.975.7470
Facsimile: 616.975.7471

CALIFORNIA

Riverside

3801 University Avenue
Suite 560
Riverside, CA 92501
Telephone: 951.276.4420
Facsimile: 951.276.4405

Please note: Attorneys Timothy Ferrand and Shannon Lozon, along with their outstanding support staff, have relocated to a larger office space.

MISSOURI

Kansas City

1600 Baltimore Avenue
Suite 200B
Kansas City, MO 64108
Telephone: 816.842.1880
Facsimile: 816.221.0353



On Law is a monthly publication from the law firm of Cummings, McClorey, Davis & Acho, P.L.C.

On Law is intended for informational purposes only and should not be used as a substitute for individual legal advice. Please consult an attorney regarding your particular situation.

Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features or to be removed from the mailing list, please contact Jennifer Sherman.

To reference previous issues of On Law, please visit www.cmda-law.com.

CMDA: On Law
33900 Schoolcraft Road
Livonia, Michigan 48150
(734) 261-2400
E-Mail: jsherman@cmda-law.com



Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

33900 Schoolcraft Road
Livonia, Michigan 48150



PRSR STD
US POSTAGE
PAID
PERMIT NO. 63
SOUTHFIELD, MI