



Releasing the New 2021 Consumer Protection Litigation Report

Laura Hopkins, Legal Data Expert and report author at Lex Machina, Michael Cardoza, Consumer Financial Protection attorney at Cardoza Law Corporation, and Neil Magenheim, Director of Client Relations at Lex Machina discuss the latest findings and trends in consumer protection litigation, including top law firm and party data, timing metrics, case resolutions, damages, and more. Lex Machina breaks down its data based on specific claims and characteristics and the report includes data on the following areas:

- Fair Debt Collection Practices Act (FDCPA)
- Fair Credit Reporting Act (FCRA)
- Truth in Lending Act (TILA)
- Telephone Consumer Protection Act (TCPA)
- Data Breach
- Federal Trade Commission (FTC) / Consumer Financial Protection Bureau (CFPB) Enforcement
- Unfair / Deceptive Trade Practices (UDTP)
- Class Actions

Speakers:



Laura Hopkins
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Michael Cardoza
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Neil Magenheim
Director of Client Relations
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Neil Magenheim (00:00):

Hello again, everyone and welcome to the Lex Machina and a Consumer Protection Report Webcast. Before we get started with our program, I'd like to point you to the Q&A function in the bottom of the Zoom screen to propose any questions for our guests speakers today. What is Lex Machina? Lex Machina is legal analytics. Legal analytics help law firms and corporations win. Some of the most recognizable brands in the world use Lex Machina to make more informed data-driven decisions on business matters, on how to handle cases and how to select, evaluate, and benchmark their outside counsel. Hundreds of law firms use Lex Machina to help them win business and optimize outcomes on behalf of their clients and their firms. My name's Neil Magenheim, I'm the Director of Client Relations here at Lex Machina, I'll be the host of today's webcast and I'm really excited to introduce our guest speakers.

Neil Magenheim (01:03):

First start with Mike Cardoza. Mike Cardoza is a consumer financial protection attorney who helps victims of identity theft, credit reporting errors and debt collection harassment regain control of their financial lives. Mike was trained as a trial attorney in the US Marine Corps and is a graduate of UCLA with a degree in business economics and also the Georgetown University Law Center. Mike is a regularly featured speaker and commentator on consumer's rights and credit reporting. Mike, thank you again for your time. We look forward to your insights today.

Neil Magenheim (01:40):

Second speaker I'd like to introduce is Laura Hopkins. Laura Hopkins is a legal data expert here at Lex Machina and author of the Consumer Protection Report that we'll be discussing today. Laura focuses on developing and maintaining Lex Machina's consumer protection, securities, bankruptcy and Delaware Court of Chancery modules to deliver useful data analytics and ensure data integrity. Before joining Lex Machina, Laura served as a civil litigator for over 13 years in the Western District of Pennsylvania and District of Maine. Laura received her law degree from Case Western Reserve University School of Law. Laura, thank you as well for joining us and your work on this. I'll now hand it over to you to start the program.

Laura Hopkins (02:29):

Thanks Neil and thank you, Mike, also for joining us today. So let's jump right into the data. Our first figure is an overall consumer protection filing chart identifying the number of federal consumer protection case filings by year. As a reminder, consumer protection cases in Lex Machina include one of three types of cases. The first type is any case with a claim brought under a major federal consumer protection statute. So this is your Fair Debt Collection Practices Act, Fair Credit Reporting Act, Telephone Consumer Protection Act and Truth and Lending Act.

Laura Hopkins (03:09):

The second type, is a consumer protection case that includes an enforcement statute action brought by a federal government entity. So this is mostly your FTC Act and your CFPB Act. Then lastly, consumer protection includes data breach claims brought by or on behalf of the consumer. So here we see that over the last 10 years, consumer protection cases have been pretty steady, but you will see as we dig deeper, this level trend is really a combination of specific claims seeing steady increases and decreases

over the years to bring us a pretty level playing field. Mike, while we are looking at these general figures, can you tell me a little bit more about how you use data in your practice?

Michael Cardoza ([03:55](#)):

Yeah, sure. So I am a consumer plaintiff's attorney. So everything I say is coming from that worldview, but if you're not doing what I'm doing and you're on this webinar, I think you can easily adapt it to how would that work for you in opposing plaintiffs or doing regulatory work or whatever it is. Also, since we're on a consumer protection webinar, I'm going to use the acronyms that I think we're all familiar with for the federal laws and whatnot. So please put a hand in the air if I'm saying something that doesn't make sense, but overall, the issue is that Lex Machina it isn't a legal research thing. It's a legal analytics thing and it's totally different. What I can see with Lex Machina and the data is I can see behavior and know one of the biggest indicators of someone's future behavior is their past behavior.

Michael Cardoza ([04:49](#)):

Right now, I've got a window on it from the strategic level, all the way down to the tactical level. So I can see what defendants are, for example, advancing what theories, where, and if they're being successful and if so, how? I can see before I even file suit or even considered taking a case what defendants are amenable to suit and then how they'll typically conduct their initial phases of litigation. I can tell who traditionally represents them. I mean, all down to the numbers. I can see exactly what motions they've used, in what venues, and what oppositions have been successful and which haven't. Then I also have a window into the behavior of the bench. I can tell which benches are, for example, more likely to reach for an MSJ disposal and under what circumstances that's likely to happen. So these are just two or three examples of how this thing gives you a window into the behavior that's happening around us all the time.

Laura Hopkins ([05:52](#)):

Thanks, Mike. I definitely want to take a deeper dive into your process as we go. So let's go into the specific data making up these numbers. One way that Lex Machina slices their data, it is by adding tags to cases. The tags are added based on both machine learning and attorney review, which allows users to filter for, or exclude, based on their individual case data. So here we're looking at consumer protection cases with the class action tag. We see that there was a pretty clear increase in class actions from 2011 to 2015, but they've stayed pretty level since then. Moving forward to the specific claims of our alphabet soup, that we call consumer protection. When we look at claims like the Fair Credit Reporting Act, the FCRA, we see that cases have increased pretty steadily over the years. Mike, from your expert point of view, what do you attribute this increase in FCRA claims to?

Michael Cardoza ([06:58](#)):

In my mind, it all boils down to this thing. Consumers are getting their credit scores, and you can put air quotes around that, for whatever it means, but they're getting these credit scores pushed to them through their phone. So if it's low, they're constantly being reminded that they're inadequate. If it's high, they're constantly being pumped to get a new product. So they're hyper aware of the credit score as a numerical measure of their financial power and, whoa be when there's something that changes drastically or they feel there's something wrong with it, they're on it like white on rice.

Laura Hopkins (07:36):

Yeah. I know I have access to my Credit Karma. I get it readily all the time. Moving forward to FDCPA, in contrast to the uptrend that we saw super claims in FCRA claim, in FDCPA we're seeing a general downtrend. It is noteworthy though that even though we're seeing a downtrend in FDCPA, it is the largest subset under the consumer protection umbrella, so even-

Laura Hopkins (08:03):

... subset under the Consumer Protection umbrella. So even though there are fewer cases being filed than there were 10 years ago, there are still more overall than any other claim in Consumer Protection. Mike, do you know what's going on with the FDCPA claims? Are there less?

Michael Cardoza (08:17):

No, but like any lawyer, I'll just caveat my language and then talk like I do. You can see the chart starts at 2011. So I know from experience that '08 and '09 were really difficult for smaller collectors and that led to a concentration in the industry. So we've got fewer more well-resourced players in the collection industry, and those resources are going towards training and in particular technology that is helping reduce the variability of the collection process. Because as we all know, the FDCPA is a strict liability statute. If you break it, you bought it, and so it's all about having to prevent those errors from happening in the first place.

Laura Hopkins (09:06):

Yeah. You sound like you have a good insight into the industry.

Michael Cardoza (09:11):

You know what could happen? Well, I mean, that may come from having been a former debt collector, which I failed to reveal in my bio, but that's another story, what could happen, I don't know, at the end of 2020, as we come into 2022, is the CFPB is Regulation F rules on debt collection are going to introduce 50 bazillion new rules. So I think we might see a little spike in litigation as we start to iron out what those things actually mean.

Laura Hopkins (09:39):

Oh, well, we will keep watching. So next, I want to mention, you will find more data in the report, but for this webcast, we'll take one more claim, and that is the TCPA. Here we see the TCPA peaked in 2016 and ever since then has been on the decline. Mike, can you tell me more about TCPA litigation?

Michael Cardoza (10:03):

I used to have this great demonstrative aid for mediators and judges here in the Ninth Circuit about TCPA, and it was just a blank piece of paper with a photo of that old green rotary phone that used to be on your grandma's night table. And I would just tell the judge, "This is what an ATDS is not, and everything else is, so let's get over the facts and start talking about the money." TCPA really had its heyday in the liberal construction of what an automated telephone dialing system was in '16 and '17. And then with the FCC clarifications, and more recently, as we got into circuit and Supreme Court litigation about what an ATDS is, the bloom has largely come off the rose. There's also been technological advances like human click intervention that have really sprayed a lot of water on this TCPA fire.

Laura Hopkins ([11:04](#)):

Interesting. Moving forward to top districts, this is a list of the top most active districts for Consumer Protection case firings from 2018 to 2020. We broke it out, let me show you, by case total, and then we filtered for class actions followed by other individual claims. So we see here the top three districts are Northern District of Illinois, Middle District of Florida, and the Eastern District of New York. Mike, can you tell me, as part of your process, how would you use the district filter to learn more about your particular case?

Michael Cardoza ([11:45](#)):

Well, a lot of times I don't have choice about my venue, I don't have a lot of choice, but I still need to know what districts, let's say in California, I still need to know what districts are doing what, and which ones are amenable to what kind of claims. Likewise, if I hear of some kind of fire burning over on the other side of the country that might have implications for my circuit or my district, I want to zero down into that by district level data and see exactly what's going on and then make up my own mind about whether or not that's a flash in the pan or whether that's a trend that's likely to spread.

Laura Hopkins ([12:24](#)):

That's great. Moving forward to top most active plaintiffs, the most active plaintiffs is set up similar to the district, total number of cases by party, then class action and individual claims. It isn't surprising that the FTC is the top plaintiff here followed by individuals. If you look at Mr. Fabricant also, who is the second most active plaintiff, it seems that he is the lead plaintiff in most class actions related to TCPA. There's only one of them that he was not part of a class action and was just an individual plaintiff. And looking over at the most active defendants, there's no surprise here that the top defendants are credit reporting agencies followed by debt collectors and financial institutions. So Mike, while we're talking about parties, can you tell me how you use party data in your practice?

Michael Cardoza ([13:28](#)):

Yeah, I mean, okay, so let's say I have a consumer who's a victim of ID theft and Midland is reporting to, what is it, Equifax, Experian, and TransUnion. What do I need to know about those folks? Not much. We do it every day, we do it all the time, and so I get an idea of how they respond to litigation, who represents them, whether or not they have deep pockets, whether they engaged in litigation, what their primary and secondary litigation strategies are. But a lot of times, I'll get a phone call from somebody who says, "Oh my gosh, I've been ripped off by Acme Windows. Well, oh my goodness. Who is Acme Windows?" So we're going to dive down into the Secretary of State. We're going to figure out who owns it. What do they own?

Michael Cardoza ([14:13](#)):

And Lex is important because I've got to figure out, are they amenable to suit? Is there any there, there, or are they just some criminal enterprise? And so I can tell early on as part of that critical process in deciding whether or not to take a case if the defendant is amenable to jurisdiction or whether they're just some shady shack that suffers default judgments at the rapid rate.

Laura Hopkins ([14:38](#)):

That's helpful. Moving forward to plaintiff's law firms, it's set up similar to the most active plaintiffs and defendants except here we have the total number of cases brought by that firm from 2018 to 2020 and the number of districts that they appeared in. So while Atlas Consumer Law had the most number of

cases, Morgan & Morgan really appeared in the most districts of firms on this list. Looking also at most active defendant law firms, we see that Jones Day holds the top in number of cases and number of districts. So, Mike, can you tell me more about your process when you're looking at law firm data?

Michael Cardoza ([15:30](#)):

As attorneys, we'd all like to say, well, I mean, we do, every case is unique, every set of facts is specific and unique, and every consumer is unique, every client's unique, and every set of goals is unique in any litigation, which is all true. But we tend to be creatures of habit, creatures of pattern, and we work together in these communities called law firms in order to lighten the burden in order to specialize in order to be more focused. And what that results in a lot of times is having things like a brief bank or having things like a-

Michael Cardoza ([16:03](#)):

Times is having things like a brief bank or having things like a game plan or a playbook. And what you can see if you take a look at defense attorney firm behavior, and that's like the big behavior, okay how long did their cases take to resolve versus another firm's cases? But then you drill down into what are they likely to answer with, is it going to be a motion to dismiss? Is it going to be judgment on the pleadings? Is it going to be an answer? I can kind of tell what the game plan is for that law firm in either this specific practice area or this particular geographic venue or both. I mean, even I can drill it down to the individual attorney.

Laura Hopkins ([16:43](#)):

Yeah, exactly. So moving forward to timing also. Lex Machina also provides timing data, which tells you the time it takes to reach certain milestones in a case. So here we see the time to class certification, summary, judgment, trial, and termination. Then on this next slide, I've kind of highlighted those median numbers for you. So you see where we're at in terms of median number of days. Mike, can you tell me how you use timing data in your practice?

Michael Cardoza ([17:23](#)):

I think that the thing that everybody hates, probably everybody hates about life, but certainly hates about litigation is uncertainty. And it's no different for plaintiffs than it is for defendants. Because the plaintiff needs some set of reasonable expectations, they're needing their situation to be fixed yesterday because they already had harm but you've got to give them a realistic expectation about how long it's going to take to get there. And it's easier to deliver that upfront. Look, it's going to take 18 to 24 months. How do I know that? Well, I can just go see the data. They've got a TCPA class claim, okay this is about the average time to whatever. And so it's really important in delivering client expectations and that then keeps things moving along smoothly and more predictably.

Michael Cardoza ([18:18](#)):

Also look, even if you're a defense firm where... I mean, for both sides, it has to do with billing and budgeting. You're going to do your work first and then you're going to get paid, which is usually how it works in this business. So you're able to now figure out all right on these particular sets of cases when is it likely that I'm going to get paid. And each side can develop revenue models from that data, it's really, I mean, it helps you sleep better at night.

Laura Hopkins (18:49):

Great. Thank you. Moving forward to case resolution. So this is our case resolutions donut, and follow me as I break this down for you. But the green represents likely settlements, so these would be stipulated or voluntary dismissals and here we see about 83% of cases in consumer protection are ending in likely settlements. The yellow indicates procedural resolutions. And then over here, if you get a little deeper into the red, which is the claimant wins and the blue is claimant defendant wins. And just to provide you with a little bit of contrast, we see major claimant wins here on consent judgment and then again on the claimant wins side, also on default judgment. While there is a claim defendant when on consent judgment, which was probably some sort of counterclaim or cross claim.

Laura Hopkins (19:52):

And then on the next slide, we've highlighted summary judgment. So you see here that claim defendants are winning far more often on summary judgment than claimant wins, although they are winning sometimes on summary judgment. And then obviously we see right above that, the judgment on the pleadings and the disparity in that. So in addition to case resolutions Lex Machina findings offer insights into all findings, whether or not they resolved in a case resolution. So for example, a TILA claim might get tossed on judgment on the pleadings, but the FCRA claim survives. So that's where our finding chart comes in to tell you the specific findings at different stages in litigation. We've highlighted summary judgments somewhere... Oh, there we go. Sorry. We've highlighted summary judgment for you here. And that's where we see the most frequent finding on summary judgment was a finding of no FDCPA violation. The numbers are consistent though, given that FDCPA, as I said before, is the largest subset in consumer protection.

Laura Hopkins (21:08):

So Mike, can you tell me more about how you use findings in case resolutions when you're doing opposition research on lawyers and judges?

Michael Cardoza (21:18):

Yeah. Like let's just take this chart for example. Okay. So let's say I've got FDCPA CPA cases and now I'm looking at this like, wow. So there's filings where there's a judgment on the pleadings and there's no violation, what are those and where are they happening? So I just use this chart to drill into what those decisions are. And then I just go look at all the complaints. And frankly, I just go look at the factual allegations, like, all right does that state a claim? It certainly feels like it does, well apparently in the Eastern district of Texas, it doesn't or in Northern District of California, that's not going to fly. So you begin to kind of understand where the boundaries of your viable cases are and this point some outright away. I'm not sure if I answered the question, but I'm pretty excited about that feature.

Laura Hopkins (22:14):

No, that's correct. I think digging deeper into the actual findings is helpful to know to anticipate what's coming next, like you said. So on our next and last slide, we see a small piece of what is available in Lex Machina's damages data. These are consumer protection total damages awarded between 2018 and 2020. They are broken out by number of cases and then total award and then judgment types. So default judgment, consent judgment, verdict, which are only jury verdicts and then merits, which are judgements on the pleadings, summary judgments and bench trials. To show you some contrast, just to kind of bring the slide home, in restitution awards, which is the highest amount and these are mostly big FTC cases that these numbers come from, but they ordered almost \$5.5 billion in damages, but that was

only across 144 cases, which is much lower than the 292 million in statutory damages. But here we see that that was oppressed 569 cases. So less damages, more cases. And then we also see down here in approved class action damages, a high amount of damages were awarded across a higher number of cases. So that kind of brings some context to the slide a little bit.

Laura Hopkins ([23:51](#)):

So Mike, how does having damages data help your practice?

Michael Cardoza ([23:56](#)):

It's funny, sort of, that we leave it to the last but it becomes apparent why we do when we looked at all the other data-

Michael Cardoza ([24:03](#)):

... parent, what we do, when we looked at all the other data, liability is usually not the issue, particularly in consumer protection. With 80 some odd, if not more, percent of the cases settling, and then the early outs with the judgements on pleadings and motions dismissed, the central issue then really is one of price. What are reasonable damages and what's a reasonable price for the case? And this is invaluable as you get further into litigation, where it becomes more fact specific, it hasn't been an easy answer for both parties, and you're now starting to drive towards trial, and everybody's kind of get to get a firm grip on reality about, well, what is the case really worth? What's our exposure like? And when you're digging down to go to that final mediation or mandatory settlement conference, and you're looking for examples of average damages awards for, let's say, emotional distress in your district, or pecuniary damage and interest, you really want to have cases and sites and things that are current to say, check it out. This is what it's worth.

Laura Hopkins ([25:14](#)):

That's great. That's helpful. So that is my section of the presentation. Mike, thank you so much for joining me today. As I mentioned, what you see in this webcast is really just some of the content that is in the entire Consumer Protection Report. I want to thank our listeners as well. And Neil, I'll turn it over to you for some Q&A.

Neil Magenheim ([25:37](#)):

Awesome. Excuse me. Nice job, Laura. Mike, thank you again for your color and commentary and the energy. I'm sure it came through in the audience, and you did a fantastic job. So thanks again for that. We did see a couple of questions come in. First one is for Laura, and I'll get everyone out of here in the next three minutes. Does the report include information on any impacts to consumer protection litigation caused by the pandemic?

Laura Hopkins ([26:08](#)):

Yes, it does. CCOVID-19 is one of our tags in our software, and it's manually reviewed by attorneys. And so the COVID tag definition, just so everybody knows that, in order to be tagged COVID-19, it has to be a but/for cause by the pandemic. So the case would not have been filed because the allegations are tied explicitly to circumstances created by the pandemic and/or the factual description of the case explains how pandemic related circumstances exacerbated the dispute. So what we're seeing in COVID-19 and consumer protection, we saw a lot of mortgage forbearance agreements go to [inaudible 00:26:57] claims because they dinged people's credit, and consumers didn't anticipate that because the bank

agreed to forbear to collect. We saw a lot of people lose their jobs, and they're being collected. Collection agencies are pursuing the debt, and they're saying, "I don't have any money. COVID... I lost my job." So those are the two main cases that I've been seeing in consumer protection related to COVID, but the report covers it through quarter two in 2021.

Neil Magenheim (27:30):

Great. Thank you. Another question just came in maybe for the both of you. Do you have a read on the most used measures of damages/restitution and statutory consumer protection actions? I don't know if, Mike, if that's something you wanted to talk to or if want to...

Michael Cardoza (27:50):

I had originally thought that I had an answer to that question, but now I think the questioner might be talking about statutory class actions.

Neil Magenheim (28:01):

Okay.

Michael Cardoza (28:02):

Because I don't think we'll find a lot of statutory actions in individual cases here in the data.

Neil Magenheim (28:09):

Got it. That's useful. Thank you. And then the last question geared to you, Mike, unless something else comes in is, what is your consumer protection litigation crystal ball look like? What's on the horizon? What do you see from a forecasting perspective?

Michael Cardoza (28:24):

Mike Cardoza's projection for the next 12 to 24 months is that we will see a turnaround bump in FDCPA litigation as the CFPB rolls out the new regulation F rules on debt collection here in November as planned. And that FCRA will probably continue in a linear fashion as more consumers become aware of the importance and power of their credit report and their credit score, as more companies, take a look at the Spokeo case, fall under the ambit of the FCRA, much to their surprise, and as more consumer practitioners become familiar and proficient with the workings of the FCRA.

Neil Magenheim (29:11):

That's great. That is great. That wraps up the Q&A. Mike, again, thanks for your insight. So how do you get the report? Please visit www.lexmachina.com to request the report. Small ask in return is that one of our legal analytics experts will reach out to you in response to your request to set up some time for five or 10 minute quick screen-share to look at Lex Machina and through the lens of your data, your cases, your clients, et cetera. So again, www.lexmachina.com to request the report. Thank you everyone for attending. Mike and Laura, thank you for your insights and your preparation. This does conclude our webcast. Thank you.