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Webcast: Releasing Lex Machina's latest 2023 Consumer Protection Litigation Report

In this webcast, James C. Vlahakis (Vlahakis Law Group LLC's Senior Attorney), Anya Verkhovskaya (Class Experts Group's President and CEO), Laura Hopkins (Lex Machina's Legal Data Expert in Consumer Protection Litigation) and Aria Nejad (Lex Machina's In-house Counsel), discuss consumer protection litigation trends over the last three years and offer insights on judges, venues, parties, law firms, case filings, timing, case resolutions, findings, damages, and more. The webcast will also include a look at emerging trends in connection with federal appellate consumer protection litigation.

Speakers:

James C. Vlahakis
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Vlahakis Law Group LLC

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President & CEO
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Laura Hopkins
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Consumer Protection
Lex Machina

Aria Nejad
In-house Counsel
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Aria Nejad ([00:00](#)):

And welcome everybody to today's webcast where we will be introducing Lex Machina's newly released 2023 Consumer Protection Litigation report. My name is Aria Nejad. I'm in-house counsel here at Lex Machina and I'm moderating today's webinar. I'll introduce our guests here shortly who will discuss consumer protection litigation trends over the past three years, and they're going to offer insights on judges, venues, parties, law firms, and more.

([00:23](#)):

A couple of quick housekeeping notes before we get started. This is going to be a 25-minute presentation followed by answers to any questions submitted by attendees for up to 30 minutes total. So, please share your questions at any time and we'll review them together at the very end of the presentation. At the end of the presentation, we have a short survey. We really appreciate your feedback on today's webcast. Takes less than a minute and it helps us improve our future webcasts, so please take the time to share your thoughts with us at the end.

([00:53](#)):

First of all, a little bit about Lex Machina. Lex Machina is legal analytics. It's our focus. Lex Machina provides legal analytics to companies and law firms, enabling them to craft successful litigation strategies, win cases, and close business. We currently count over three quarters of the AmLaw 100 as clients in addition to companies of all sizes from Fortune 50 companies to small businesses. I'm joined today by my colleague, Laura Hopkins, Lex Machina's legal data expert in consumer protection litigation. Before joining Lex Machina, Laura served as a civil litigator for over 13 years in the Western district of Pennsylvania and the District of Maine. Welcome, Laura.

Laura Hopkins ([01:32](#)):

Thank you.

Aria Nejad ([01:33](#)):

Thank you. We're also excited to have with us today Anya Verkhovskaya as the founder and CEO of Class Experts Group LLC. Anya leads a team of professionals with extensive experience in the management and analysis of mass data sets and consumer records for class action litigation support. Welcome, Anya.

Anya Verkhovskaya ([01:52](#)):

Thank you.

Aria Nejad ([01:53](#)):

We're also excited to have with us today senior attorney at Vlahakis Law Group, James Vlahakis. James's primary focus involves protecting consumers from creditor harassment and collection activity involving debt collectors and debt buyers, and he has over 25 years of experience doing so. Welcome, James.

James Vlahakis ([02:10](#)):

Thank you very much.

Aria Nejad (02:12):

At this point I'm going to turn the presentation over to you, Laura. Laura, go ahead and begin the presentation when you're ready.

Laura Hopkins (02:18):

Thanks. Thank you. And thank you Anya and James for joining me today. Today we're going to go over a lot of content in our 2023 Consumer Protection Litigation report. We do have more than what we're covering, so make sure you get a copy of the report. But we're going to start, we're going to discuss filings, courts, judges, parties, law firms, timing, case resolutions and damages. So, let's get into the data.

(02:50):

First, we have consumer protection cases filed over the last 10 years, so from 2013 to 2022. And we're seeing a pretty steady trend starting downward in 2017, really. James, can you comment on this? Is this what you're seeing in your practice?

James Vlahakis (03:09):

Yes, there was a lot of TCPA litigation that started to trail off in 2017, '18 and '19 and more recently after the Facebook decision. I think that Anya will go into a bit more detail as to that, but also even though there's been a lot of consumer statutes have been created, the courts are making it a lot harder for cases to stay in federal court. So I think that's been trail off in the number of filings and I'll go into it a bit more detail later, but a lot of article three issues have come up that I think have impacted how many cases are actually being filed.

Laura Hopkins (03:45):

Great, thank you for that. Next we'll take a look at consumer protection class action cases filed. We've got sort of a, excuse my technical language, a mountain shape here with a rise and then kind of a fall going into 2018 to 2022. Anya, can you tell me a little bit about your work and what you're seeing here?

Anya Verkhovskaya (04:08):

Absolutely. From the claims administration point of view, in the past three years especially, we see quite a steady decrease of class action cases and it leads to decrease in pricing for administration overall as well as shrinking of the claims administration industry overall. We also see decreased need for expert services in the industry, and as James mentioned, it's mostly related to TCPA practice.

Laura Hopkins (04:47):

In your work, are you monitoring these trends? How would you use this information?

Anya Verkhovskaya (04:52):

Absolutely. We're monitoring these trends on a much more granular basis, which Lex Machina allows, breaking it down to a variety of types of class action cases filed. And some of them actually have a little bit of a different trend, so we are analyzing it with Lex Machina's reporting capacity on much more granular level.

Laura Hopkins (05:24):

Cool, thanks. Next we'll take a look at individual types of cases that we tag using our natural language processing. So, here we're looking at Consumer Protection Fair Credit Reporting Act cases, and to me it seems like this is kind of holding the trend in consumer protection cases steady because of the increase in case filings. James, can you tell me, is that what you're seeing?

James Vlahakis (05:52):

Absolutely. I think with the Fair Credit Reporting Act, a lot more consumers are aware of how it applies to them. I think also during COVID, a lot more people were worried about their finances, so they were looking at what they can do to protect themselves, looking at errors in credit reports. And I also think that the increase might be law firms shifting the Fair Credit Reporting Act because it's easier to establish Article III standing for those types of cases as opposed to the TCPA. So, you are correct that this is sort of balancing things out as best it can, even though there's a downward trend to consumer cases.

Laura Hopkins (06:29):

Yes, and just so our audience knows, we also do track FDCPA cases, data breach cases, Truth and Lending Act cases, and with state-based claims, Unfair and Deceptive Practice Act cases.

James Vlahakis (06:50):

And those are great tools that you have because I have used all of that to sort of track where trends are going or to monitor other cases to see where they're going. Sometimes the cases disappear because there's an enforceable arbitration clause, but the tools that you guys have are excellent and it's one of these things that talking to lawyers that have been doing this for a long period of time, if they're not aware of this, they're missing out 'cause it's the data that you can put together and the ease of finding it. It's been very helpful in my practice.

Laura Hopkins (07:19):

Okay, thank you. For the purposes of this webcast, we're really just talking about the thicker cases and the TCPA cases. But here we see the downward trend in TCPA cases that we have mentioned a few times already. Anya, can you tell me what you're seeing and what you do with this data?

Anya Verkhovskaya (07:38):

Absolutely, and it's actually fascinating to track over the past eight years how the practice of TCPA cases have been developing. We discussed earlier that there were some interesting Supreme Court findings in the TCPA industry, but also overall, we see that there is an increased compliance of TCPA practices inside various corporations. That decreases the number of filings.

(08:21):

Also, there is an introduction of spam filters and other tools from various phone companies. And while we have seen a slow decrease overall, the Facebook decision that ruled on the definition of auto dialer really changed how cases are being filed and what type of TCPA claims are being litigated. What's interesting is that we see a small-

Anya Verkhovskaya (09:00):

... see a small stability between '21 and '22. And if you dig with Lex Mach, in the tools a little further into that period of what's happening with TCPA cases, you will see that this somewhat of stability was

created by state TCPA cases that were filed, or what we call meaning TCPA cases filed in various state jurisdictions. And I just want to mention that it is incredibly helpful to use Lex Machina for numerous state filings.

Laura Hopkins (09:43):

Yes, we do have ever expanding state coverage as well. Thank you. So, getting into the most active districts by cases filed just over the past three full years, 2020, 2021 and 2022, we see a few ... A few different things stand out to me. One, the top number of cases was filed in the Central District of California in 2020 with the 1022 cases. And also, the Eastern District of New York has pretty high numbers. And then in 2022, we really just jumped down to less than half of what was filed in 2021. So James, do you know what's happening in these two instances?

James Vlahakis (10:35):

I think some of the trends were that in California there were a lot of firms that were filing TCPA cases and that has trailed off, but it was a pretty big push to move cases along before the Facebook decision was going to come out, because we kind of knew it was in the pipeline. I think in the eastern district of New York that the large amount of cases, but a big drop is due to a lot of debt collectors are out in New York area there. And because of some adverse rulings, that has caused there to be a bit of a drop off in cases. One that a lot of people were pushing on in 2021 was the fact that some debt collectors were using third-party vendors to send out debt collection letters.

(11:21):

And people were contesting that that was a violation based on an 11th circuit case. The 11th circuit then reversed itself. And I think that might be why there's a drop in that New York area because a lot of firms that were pushing that theory lost that very early on. And then the 11th circuit kind of shut the door on that because the courts in the Eastern district were looking at the closest highest authority. And when the 11th circuit reversed itself, all those courts just shut down those cases pretty quickly. So, I think that's where some of those trends are coming from.

Laura Hopkins (11:52):

Yeah. Thank you. That's very interesting.

Aria Nejad (11:55):

Makes sense.

Laura Hopkins (11:58):

And then, we also wanted to break it down for you guys by case type. So, here we see the total, again, the middle district of Florida is the most active district. I forgot to mention that in the last slide. But then we have the breakdown by some of the different case types that we identify, including data breach. And I did want to point out some of these class action numbers in the higher districts, again, Central District of California and Eastern District of New York are showing up again. Anya, can you talk about the class actions in these venues?

Anya Verkhovskaya (12:32):

Absolutely. We see that a lot of just by shear demographics and geography, a lot of defendants are in those states and the population of those, the distribution of those businesses are such that those

venues are very, very busy with a higher number of cases. And we see that there is also a faster movement of cases through those districts.

Laura Hopkins (13:18):

Right, right. Moving forward, we're looking ... We also track appellate circuit court data. So, these are the most active circuits by cases docketed from 2020 to 2022. And I did want to point out kind of something that was interesting to me was kind of this drop in 7th circuit cases from 2021 to 2022. Again, it's almost half the number of cases were filed there. James, have you seen this or what's [inaudible 00:13:51]-

James Vlahakis (13:51):

Yes. And I think part of that is based on the fact that at the end of 2020, there was a series of decisions by the 7th circuit that affirmed the dismissal of a lot of fair debt collection practices and cases based on the lack of Article 3 standing. And once each different decision came out, it was exploring different types of allegations involving FDCPA. I think once we realized that the court was sort of shutting the door to those cases, or it was saying, "You can get your foot in the door if you complete X, Y, and Z," that led to, I think a drop of appeals because people realized there's some clarity in the law. But if you could bounce back to the last slide, I did want to point out one interesting thing.

Laura Hopkins (14:32):

Oops. I can try.

James Vlahakis (14:35):

In terms of what's driving some of the litigation in the most active districts, you can see there's bigger trends in terms of how you break it down through FDCPA litigation. There's a lot of cases out there that, especially Northern District of Illinois, there's a lot of plaintiff's lawyers that are operating there that are generating a lot of FDCPA cases. Same thing as in Florida, Middle District and Southern. And the trend that we'll probably see dropping off by 2023 is that there'll be less FDCPA in Florida and in New York based on that adverse ruling that came out from the 11th circuit on the issue of mail vendors. But this is something that I thought was really cool, how the data can analyze this and just see what districts are big for types of cases.

Laura Hopkins (15:35):

And how would you use this knowledge and this information in your practice?

James Vlahakis (15:38):

I used it more to at least monitor cases that were there. So, I really specifically followed some case and maybe there's a teed up issue for judgment on the pleadings or summary judgment. And I would also try to see what firms are really pushing this stuff and what defendants are actually subject to these cases. Because most debt buyers may be able to grab onto an arbitration clause, and you can see that obviously that their cases might be dismissed pretty quickly. But I think it's as helpful to sort of see what defendants are also fighting these cases, because you can see that they're not just voluntarily dismissed ... The case isn't being dismissed by a voluntary dismissal. I know there's more slides on that. But I think the data is helpful as to see what's going on and what's happening with my colleagues on both sides.

Laura Hopkins (16:28):

Right. Yeah. Thank you. And we will move forward with that too. First, I want to show you most active judges over the past three years. Anya, do you have familiarity with these judges? What are you seeing?

Anya Verkhovskaya (16:42):

Yes. But I just want to talk sort of overall about Lex Machina's ability to learn what judicial practices are like for each of those and many other judges. We work with a number of judges more often and we know them, but those that we don't, it is critical for us to learn more about their decisions, what their concerns are in cases, in the class action cases that we either issue expert opinions or working on, we learn the terminology, the verbiage, what they're comfortable ... The words that they're comfortable using. So, we can write expert reports and notice plans in the language that speaks familiarity to those judges. We also set up a number of alerts on how judges rule on various cases which we receive on a regular basis automatically. And those alerts-

Anya Verkhovskaya (18:03):

Receive on a regular basis automatically. And those alerts are really easy to share. And the setting up of those alerts are really easy to share. And another feature that we like a lot on those judges is that their rulings can be pulled really with a one click of a button directly from the email. And that's very convenient.

Laura Hopkins (18:25):

That's great. Thanks. So moving forward to most active plaintiffs, Anya, staying with you, I think you've been involved with some of these plaintiffs, and I know you're familiar with them too.

Anya Verkhovskaya (18:39):

Yes. We worked with a lot of those plaintiffs and you can see a trend for some of the firms, some of the plaintiffs going from larger number of cases to a smaller number of cases, and then some are going back up. It really very much shows what type of cases they're filing and what they're litigating. And if you know each of those firms, you can see, okay, the TCPA practice went down and then they decided to pick up on another practice and the number of cases are going up. But it is extremely useful for us as experts and as claims administrators because we know how to best provide services to those clients and support them better in their litigation support needs.

Laura Hopkins (19:45):

Cool. Moving forward to most active defendants. James, what can you tell us about these guys?

James Vlahakis (19:56):

Well, it's interesting. I'm smiling because most of those defendants are ones that I deal with. I think it's interesting that the lower of the three big three in credit reporting is TransUnion. And if there's any TransUnion lawyers out there, a little bit of a shout out to you because without calling out the other two, I notice how there's different compliance methods that each entity undertakes. There's different ways of approaching either TransUnion directly or other companies, even the debt buyers, to try to resolve things earlier on in the process.

(20:34):

And I think I'm going to dive into it a bit deeper at another time, but it's interesting to note that TransUnion is at the bottom of that. But they all do the same thing. So I think there's also things that you can look at in the trends if you drill down into a case, find out what is the specific issue that the consumer has against a particular credit reporting agency. And sometimes I'll see a lawsuit where only two of the three are in. And it's not necessarily because one settled out early, it's just that they weren't misreporting the debt in a manner in which the consumer had an issue with.

([21:10](#)):

As for Midland Credit and Portfolio Recovery and LVNV, they're the largest debt buyers in the country. But because they buy purchase credit card debt, usually they're subject to arbitration for most of those. And then the big banks, they're evenly spaced, I'd say. But the one thing I'm looking at is there's a bit of a drop-off in litigation in 2022. And I think that's more of just people being more compliant, having more time after COVID to reset. But it is an interesting trend is to see that with the credit reporting agencies, it's a little bit of an uptake in suits against them, but not a huge amount.

Laura Hopkins ([21:53](#)):

Right. And I did want to mention for our listeners, the districts is across, we do track individual districts, and so the districts represents how many different districts that defendant was a party in. Moving forward to law firms, Anya, you mentioned this in the last, in the plaintiff's slide, but here we do see in 2022 a big drop in these firms that I have highlighted. What's happening there?

Anya Verkhovskaya ([22:28](#)):

Well, from what we can see is that a big drop followed by Supreme Court's Facebook decision that nearly killed a large number of existing TCPA cases that had to be dismissed or stopped. A lot of TCPA cases that were under investigation from being filed due to the definition of the auto dialer in the TCPA arena. Therefore, nearly killed or killed a lot of TCPA practices in a lot of these cases in a lot of these firms and made cases much harder to file.

Laura Hopkins ([23:31](#)):

Right, right. Yeah. So it'll be interesting to watch this on our next report and see how this changed or if these firms dropped off or what happens to them.

James Vlahakis ([23:40](#)):

One thing I'd be curious to see in the future slide as we get into 2023, I know there's some law firms or companies that are suggesting that they can create an app that is allowing people to quickly submit a claim for a telemarketing TCPA violation. And I haven't seen how successful that is, but Anya's right, there was a lot of more compliance in terms of companies doing that and spam filters. So that did impact things in addition to the Facebook decision.

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

Oh, right. Yes, yes. My phone's spam filter. It is very helpful, useful, moving forward to defendants law firms. James, who are these heavy hitters?

James Vlahakis ([24:30](#)):

They do a lot of work in different areas of consumer law. It depends. Some are more insurance-based work such as Hinshaw & Culbertson. Jones Day is a lot of banking work. Seyfarth Shaw and some of the

other ones are handling a lot of Fair Credit Reporting Act cases. The Sessions firm does a lot of great work in FDC PA defense. And you can see though, there's not really that much of a drop off in litigation for some firms. Jones Day is still at the same level. Hinshaw has dropped off a lot. I think that might be because if they were defending TCPA cases and there's less of those, if there's a decrease and there has been an FDC PA filings, then that will mean less work for those firms to do. So they'll have to readjust their practices as well because those plaintiff's firms are filing less, then there's less work for the defense firms to do. We have a symbiotic relationship in a way. But the Gordon Rees, they do great work as well, and they're at the same level. They had a bit of a uptick in 2021, but it'll be interesting to see how this all plays out because the plaintiff spar is always trying to find new trends and new cases and new theories. And thanks to a lot of the legislatures, they're creating many TCPAs. And 2023 will be interesting to see if there's an uptick in that type of litigation.

Laura Hopkins ([25:58](#)):

Okay, great. I'm going to move us forward a little at faster pace here now because we're almost out of time, but we also track timing. Timing is great for when you're talking to a client about budgeting. How long is this going to take? Everybody wants to know. And so these boxes that you see here are the median timing to that event summary judgment, time to trial, and time to case termination. So that includes even like a procedural dismissal, just overall termination of a case. And then of course, we also have time to class certification. Anya.

Anya Verkhovskaya ([26:36](#)):

That's really important for us to estimate and budget expert costs to our clients. And you can break it down even more granularly with XMachina tools, which is extremely helpful.

Laura Hopkins ([26:53](#)):

Great. Thank you. So past timing and moving forward to case resolutions. This is how a case ends and I did...

Laura Hopkins ([27:03](#)):

... is how a case ends. And I did highlight for you the claimants that are mostly winning on default judgment and consent judgment. When a defendant's winning, it's usually on judgment on the pleadings. And this is overall generally consumer protection cases. And then procedural resolutions are over here, Carrie, about 8%. It's a contested dismissal or just a dismissal for non-prosecution or something like that. If you guys want to jump in on this. Otherwise, I'm going to keep moving forward because we're all set-

James Vlahakis ([27:36](#)):

Move ahead, that's fine.

Laura Hopkins ([27:38](#)):

Okay. Okay, thanks. And then I wanted to show you, we are tracking reversal rates in the circuit court. The dark red is a case that was reversed. This lighter red color is if it was affirmed in part, reversed in part. And then in consumer protection cases, we're talking about overall a 74% affirmance rate in the circuit courts. And just because there's a finding is not necessarily a resolution in a case, but it is a finding. Say there was a count one was dismissed but not the entire case, then that would result in a finding. So a finding can be a case resolution, but it also doesn't have to be. So we track those

separately. And here the highest finding was a no FDCPA violation on a judgment on the pleading. So that would be a 12V6 motion to dismiss. And I just wanted to point that out. There's more data in the actual report on these findings, but we wanted to kind of show you the major violations and no violations.

James Vlahakis (28:52):

And the very few amount of trials.

Laura Hopkins (28:55):

Right. Yes. Right. I did not highlight that. But yes, the very few number of trials. Thanks. And my last slide before, if we have time for a question or two is damages. Here we have the amount of damages, the number of cases that our damage is in by year. We also have, because we have the circuit court data, now we have reverse cases. And if the damages were reversed, how much the damages were reversed for. I highlighted the 2017 and 2016 because that was the Volkswagen diesel case that had significant damages. And so that's kind of where that bump comes from. A lot of people want to know. But James, let me ask you, how would damages help you in your practice?

James Vlahakis (29:47):

It was helpful I think if I would drill down a specific cause of action to see where the trend might be in TCPA settlements, I used that specifically in a case that I got certified where I was trying to look at what the average payouts were, what were the attorney fee provision to as well. And I think that helps because it gives people an idea of how to identify to a court that the payout per class member is going to be higher than what the average trend is. And I think this is very good to do that. It's also helpful I thought with FDCPA just to see potentially where economic damages were going as opposed to actual damages. But you're right, it's a good trend to see. And if there's more, the data in 2023 will be interesting to see. That's all I got to say.

Laura Hopkins (30:37):

Yeah. Cool. Thanks. Well, thank you both so much. This was such a cool conversation to have. I learned a lot and hopefully our listeners did as well. You guys are both very impressive in both of your fields, so I really appreciate you talking with me. We'll move on to questions. Aria, do you have any questions for us?

Aria Nejad (31:01):

Yeah, so there's a couple on here that came in. So this first question is for Anya. Anya, of everything that we've discussed today, what information would you find to be the most useful in your practice?

Anya Verkhovskaya (31:11):

Well, we have alerts set up on about 400 cases and we receive one daily report with all of the cases that we are monitoring and tracking. That allows us one click link to the docket and pulling the documents right off. Sometimes we don't have to do that because the summary of the alert includes what exactly is happening on the docket and that is extremely helpful. In addition, running a variety of reports down based on either keywords or tags that are available allow us to study industry in the format that helps us meet our business goals and litigation goals.

Aria Nejad ([32:06](#)):

Excellent. Yeah, I appreciate you letting us know about that 400 alerts. That's awesome. That's impressive. This next question is for James. James, do you have any predictions for the next few years in consumer protection litigation, like any major shifts or movements?

James Vlahakis ([32:20](#)):

Well, obviously the Illinois Biometric Privacy Act is getting a lot of traction, especially after recent Illinois Supreme Court rulings. I think there's a lot of privacy statutes that states like California have that are helpful. That's going to put an increase in filings. I've already seen that. The mini TCPA statutes that Anya talked about, that's going to increase filings. It'll be interesting to see if other states follow Illinois's biometric and create a private right of action because right now, only two other states that I'm aware of have biometric privacy statutes, Texas and Washington, but they don't have a private right of action for consumers or citizens or employees to file on. The other thing that I think will be important to see are sharing of data. There's been a lot of lawsuits about healthcare app data being shared with the likes of Facebook and other entities, and that has spawned some litigation as well.

Aria Nejad ([33:17](#)):

Interesting. Okay. Yeah, I'm already looking forward to the 2024 Consumer Protection Litigation Report. There's a lot of things, a lot of moving parts. So I want to thank everyone for joining us today. I know that we went over by a couple minutes, but the most important question, how do we get the report? I see I saw a couple of those. So really quickly, if you're already a Lex Machina customer, you can log in and find the Consumer Protection Litigation report in the help center. It's in there right now. Just go up to your name on their upper right hand corner, and the help center is in that menu.

([33:47](#)):

If you're not a customer, you'll receive an email with follow up information as well. If you're not a customer, we do ask that you spend about 10, 15 minutes with one of our experts before receiving the report, but it's relatively easy to get. I really want to thank Laura and Anya and James for all your expertise today. This was a very insightful conversation. Thank you so much, and thank you all for joining us. If you have any questions, reach out to us directly via the Lex Machina website and enjoy the rest of your day everyone.

James Vlahakis ([34:15](#)):

Thank you.

Laura Hopkins ([34:15](#)):

Thank you.