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Litigation Trends in FS & Fintech

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Agenda

- Overview
- Fair Lending Litigation
- Payments & Consumer Protection
 - Mass Arbitration
 - EFTA
 - AI
- Privacy

Fair Lending Litigation

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Will Private Actions Fill Federal Mortgage Discrimination Enforcement Void?

- To the extent CFPB pursues discrimination cases, it will only do so for matters with actual intentional racial discrimination and actual identified victims
- HMDA data will still be made public, and serves as the preliminary basis for private litigation against mortgage lenders
- Private plaintiffs will still pursue mortgage lending discrimination cases based on theories of disparate treatment or disparate impact
 - Ongoing 2022 class action against large national bank alleging discriminatory lending practices based on statistically significant differences in approval rates and pricing between African American and non-African American borrowers
 - Complaint followed reporting by Bloomberg on lending disparities
 - Ongoing 2024 class action against large federal credit union alleging discriminatory underwriting practices based on statistically significant differences in approval rates between white applicants and black and Hispanic applicants
 - Complaint spurred by CNN reporting
- Plaintiffs also bringing securities class actions underpinned by discrimination claims
 - Large bank defending ongoing allegations that directors breached fiduciary duties and violated securities laws due to discriminatory lending and hiring practices

MALDEF Lending Discrimination Initiative



Initiated 22 lawsuits since 2017 challenging alleged lending discrimination against immigrants

Cases pertain to application denials across host of credit products, including mortgage loans, HELOCs, auto loans, student loans

Litigation has occurred in at least Arizona, California, Colorado, Florida, Georgia, Michigan, Nevada



On April 3, 2025, filed latest class action against Georgia credit union alleging wrongful denial of consumer who was legally in country pursuant to DACA

Complaint indicates employee informed consumer could not lend to applicants unless they were a citizen or lawful permanent resident with green card



Settlements have included nationwide classes, and resulted in restitution to impacted consumers

Karghaian v. Citi (Feb. 2025 MTD)

- Class action arose from 2023 CFPB settlement resolving alleged intentional discrimination against Armenian Americans
 - CFPB alleged credit card unit flagged for fraud applicants with Armenian last names, particularly if applicant lived in a specific area of California
- Plaintiff claimed violations of ECOA, Section 1981, and Unruh
- MTD granted with respect to ECOA/1981, but denied with respect to Unruh
 - ECOA: Dismissed with leave to amend because plaintiff failed to adequately allege he was qualified for credit for which he applied
 - Section 1981: Dismissed with leave to amend because plaintiff alleged discrimination based on national origin, but not racial, ethnic, or alienage
 - Unruh: Claim could proceed because learned of potential discrimination from CFPB consent order, and act, not preempted by ECOA/Section 1981

Mass Arbitration

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Latest Developments in Mass Arbitration

- Mass arbitration involves the coordinated filing of thousands of individual arbitration claims against a single company
- Companies have responded to the threat of mass arbitration by:
 - Revising terms and conditions
 - Bellweather cases are decided first, followed by mandatory mediation
 - Cases are batched such that each batch proceeds as a consolidated case
 - Refusing to pay fees
 - Eliminating arbitration provisions
 - Changing Arbitral institutions

Key Mass Arbitration Court Cases

Walbrich v. Samsung Electronics America Inc.

- Nearly 50,000 arbitration demands filed over biometric privacy claims
- AAA required Samsung to pay \$4MM in filing fees; Samsung refused
- AAA closes the cases; the 7th Circuit upheld the closure

Heckman v. Live Nation Entertainment

- Arbitration clause mandated use of New Era's ADR's mass arbitration rules
- Court found the rules both procedurally and substantively unconscionable

The Electronic Fund Transfer Act (EFTA)

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The EFTA's Growing Reach



Regulators and private plaintiffs' lawyers have been pushing to broaden the scope of the EFTA

Rise in electronic payments and emerging technologies (e.g., crypto) driving regulatory focus



On January 10, 2025, the Consumer Financial Protection Bureau (CFPB) proposed a new interpretive rule to expand EFTA protections

Redefines “financial institutions,” funds,” and “accounts” to cover a broader range of entities and payment types



Wire transfers may now be within the ambit of the EFTA

In *New York v. Citibank*, a district court found that a bank may be liable under the EFTA for unauthorized consumer wires initiated using the bank's electronic banking platforms

EFTA Under Trump

- The Trump Administration is expected to scale back efforts to expand the EFTA's reach.
 - In March 2025, the CFPB withdrew its statement of interest in the *Citibank* case, signaling a shift in priorities.
- Despite this, private plaintiffs' lawyers are likely to continue advancing broader EFTA theories in court.
- State regulators—especially in jurisdictions with similar consumer protection laws—may also pursue these expanded interpretations independently.



Artificial Intelligence

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AI litigation 1.0: Targeting AI Developers

Early lawsuits primarily aimed at AI developers for how models were trained and what they produced

- Focus: Intellectual Property and Publicity Rights
 - Copyright Infringement: Claims over training on copyrighted materials without consent
 - Trademark Infringement: Allegations that AI outputs misuse protected marks or suggest false endorsement
 - Rights of Publicity: Lawsuits over unauthorized use of voices, names, and likenesses in training data or outputs

AI litigation 2.0: Targeting AI Users

The next wave targets companies using AI in products, services, and business operations

- Focus: Disclosures and Consumer Protection
 - Failure to Disclose AI Use: Claims that businesses mislead consumers by not revealing when or how content or decisions are AI-generated
 - Unfair and Deceptive Acts and Practices: Allegations under state consumer protection laws for AI misuse in marketing, lending, employment, etc.

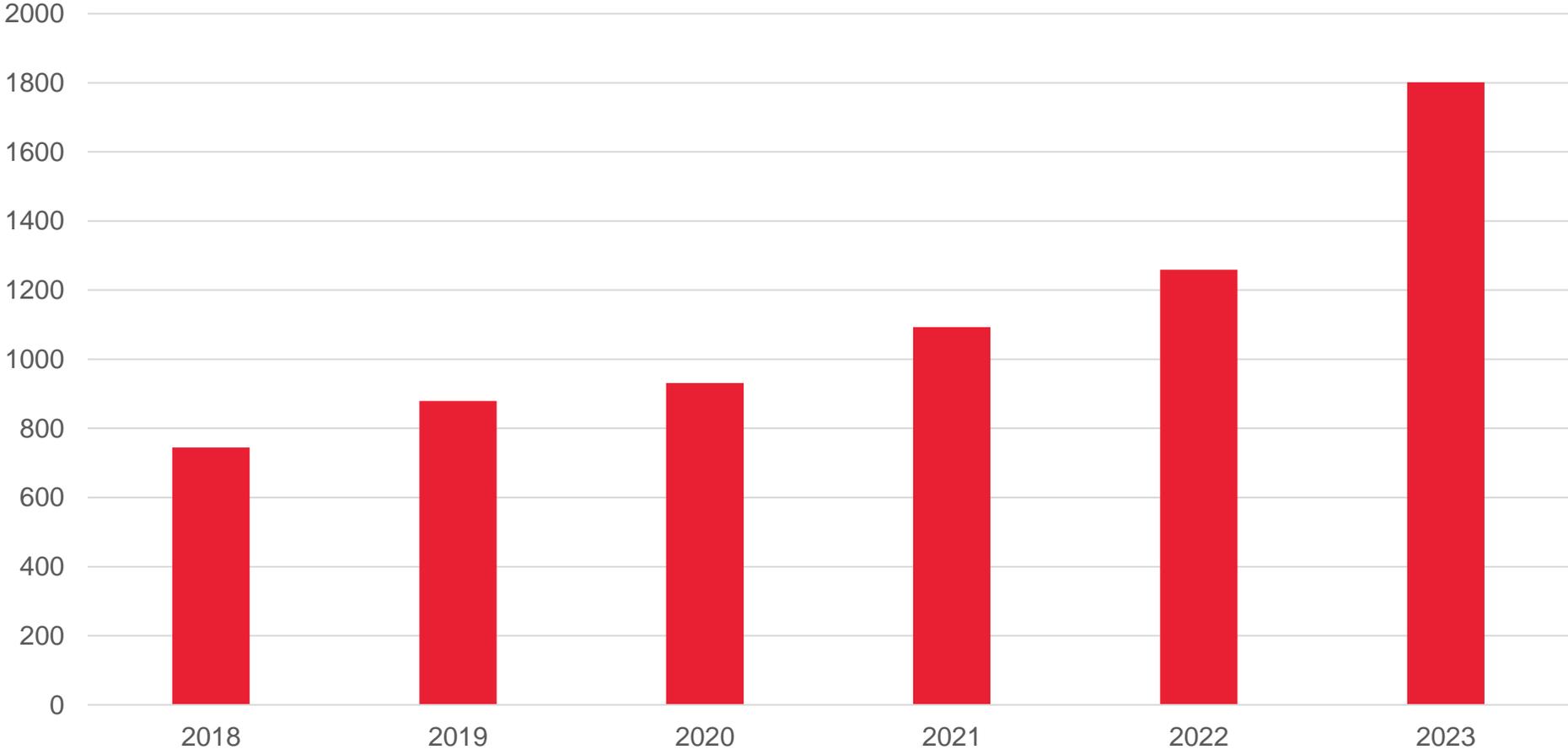
Privacy Litigation

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Privacy Litigation Trends

- Many financial institutions are targets for litigation, given their consumer-facing services
- Plaintiffs' firms continue to test novel theories, attempting to map newer technologies (e.g., cookies, pixels, session replay, ad tech, AI) onto pre-Internet statutes and common law, such as:
 - Federal Wiretap Act (ECPA)
 - State wiretapping laws, such as California Invasion of Privacy Act (CIPA)
 - Federal Video Privacy Protection Act (VPPA)
 - State consumer protection statutes
 - Privacy torts, such as intrusion upon seclusion
- “Traditional” privacy litigation is also still active
 - Data breach class actions
 - Interplay with financial services regulatory context

Data Privacy Federal Lawsuits Filed



AI Call Agents: *Ambriz v. Google*

- Plaintiff alleged that Google’s Cloud Contact Center AI (GCCAI), an AI customer service agent, violated California’s Invasion of Privacy Act (CIPA)
 - Cal. Penal Code § 631(a) contains three operative clauses protecting against “three distinct and mutually independent patterns of conduct”: (i) “intentional wiretapping,” (ii) “willfully attempting to learn the contents or meaning of a communication in transit,” and (iii) “attempting to use or communicate information obtained as a result of engaging in either of the two previous activities.”
 - Also prohibits aiding or agreeing with any person to do any of these things
- Hulu, GoDaddy, Home Depot used GCCAI to transcribe and analyze customer calls
- Court denied Google’s motion to dismiss amended version of complaint
 - Google is not a party to the communication
 - “In transit”
 - “Telephone Wire, Line, Cable, or Instrument”
- Given the prevalence of customer service agents used by financial institutions, and the increasing desire to automate certain functions, the use of AI agents should be assessed for litigation risk

Web Tracker Litigation: *In re Meta Pixel Tax Filing Cases; Smith v. Google*



Plaintiffs in two class actions against Meta and Google, respectively, brought, *inter alia*, causes of action arising under state and federal privacy and consumer protection statutes, alleging that implementation of their web tracking technologies on tax preparation websites impermissibly transmitted sensitive financial information to Meta and Google.



Court largely denied Meta's and Google's motions to dismiss complaints, allowing cases to proceed past pleading stage and into discovery (handful of claims dismissed).

Data Breach Litigation:

In re Lakeview Loan Servicing Data Breach Litig.

- Lakeview Loan Servicing (and connected companies) suffered a data breach that impacted consumer financial data.
- As is becoming increasingly common, as the data breach class action was pending, the Lakeview's state supervisory authorities launched an examination into the Company's cybersecurity practices.
- Reports prepared by third-party forensic firms were provided to regulators.
- Plaintiffs in the litigation sought the production of the reports, which Company argued was protected by the attorney work product doctrine.
- In a highly nuanced, fact-intensive ruling, the court ruled against Company, which was required to provide the reports to plaintiffs.

Financial Services Forecast: Five in Five Series

*Register using the link in
the chat.*

Session 2 – May 8, 2025

AI Talks: AI Governance + Financial Services

In this session, we'll explore the intricacies of deploying AI in the financial sector and provide practical insights on balancing innovation with risk management.

Session 3 – May 15, 2025

Rulemaking Rundown: What's In and What's Out in Federal Financial Regulation

In this session, attendees will gain insights into navigating compliance considerations during this period of uncertainty, with practical strategies for adapting to evolving regulatory frameworks.

Session 4 – May 22, 2025

Filling the Gap! State Enforcement and Regulation Priorities

During this session we will explore issues top of mind for state attorneys general and state banking departments, including bank partnerships, payment processing, fair lending (yes, it's still a thing), and unfair and deceptive practices.

Session 5 – May 29, 2025

The 119th Congress: Investigative and Legislative Priorities

Join us for our final session, where we will provide a comprehensive analysis of the critical priorities shaping the 2025 congressional calendar and their potential impact on the financial services sector, and will share practical strategies for navigating the political risks associated with congressional investigations.

Questions?

For questions, comments, or additional information, please contact the team.



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