WHITE PAPER

CONSUMER DEBT

REDUCING THE IMPACT OF THE PINTOS DECISION

Contents

Introduction

The competitive landscapes of leasing, financial services and healthcare are fraught with the casualties of tight capital markets, unprecedented delinquencies, write-offs and severe resource constraints. Legislation further complicates this trend, often prohibiting non-credit grantors from obtaining credit information on their debtors. With this being the case, many are left to find alternative ways of determining if a customer/debtor will become severely delinquent, go to loss, file for bankruptcy or pay their delinquent debt. This whitepaper will give an account of the Pintos ruling, the details of which will help to explain when it is unlawful for noncreditors to obtain credit reports on their debtors. It will also provide insight into other options that organizations have available when they require credit data on their debtors.

In January of 2011, the Supreme Court of the United States denied a petition to overturn a California Appellate Court decision, which has a significant impact on the actions that creditors and collection agencies can take when collecting a debt. Essentially, the court let stand a California decision, which stated that it is a violation of the Fair Credit Reporting Act (Section 604. Permissible Purposes of Consumer Reports [15 U.S.C. § 1681b]) for a creditor or collection agency to request and obtain a credit report on a debtor unless either that debtor has actively requested credit and, thereby, authorized the credit report, or the credit report has been issued for the purpose of collecting a judgment against the debtor.

Examining the Pintos case will provide a frame of reference for our discussion on what a party with rights to the debt, or an agency they assign to collect the debt, can do to collect a debt in a situation where they cannot legally obtain a credit report, the underlying credit bureau data, or they have not obtained a judgment.

The Pintos case

In May 2002, police found a vehicle belonging to Maria Pintos parked on the street in San Bruno, California. As the vehicle's registration had expired, police ordered the vehicle to be towed. When Pintos failed to pick up the vehicle and pay the outstanding charges, P&S Towing obtained a lien on the vehicle for towing and impound costs, and when Pintos failed to reclaim the vehicle or pay P&S's costs, they sold the vehicle. Unfortunately, the amount received did not cover the amount owed and P&S Towing subsequently transferred their claim for the balance due to PCA, a collection agency.

In December 2002, in the normal course of their operations to collect a debt, PCA obtained a credit report on Pintos from Experian. Consequently, Pintos filed a complaint under the FCRA against PCA and Experian stating that PCA violated the Act by obtaining her credit report without any FCRA sanctioned purpose. Experian was also deemed liable for providing the report.

To counter Pintos, PCA and Experian both filed motions for a summary judgment arguing that PCA had a right under the FCRA to obtain Pintos' credit report because they were trying to collect a debt. Additionally, Experian argued that they were not liable for providing Pintos' report as they were only meeting their obligation to their subscriber and were immunized against their subscriber's FCRA violations as long as they acted in good faith.

In November 2004, the district court agreed with PCA and Experian and stated that under the FCRA, PCA was permitted to obtain Pintos' credit report.

The appeal

Pintos appealed the district court's decision in December 2004, and in April 2009 the United States Court of Appeals for the Ninth Circuit filed a decision that agreed with Pintos and vacated the judgment. The change in decision was based on the court's belief that Pintos had not intentionally entered into a "credit transaction" with PCA and as there was not a judgment against her, PCA did not have the right to obtain her credit report, and Experian did not have the right to provide it.

The underlying concept is that to be considered a credit transaction a debtor needs to participate in seeking credit from the creditor. In this case, Pintos did not actively seek credit from the towing company, as she was not the one who requested that her vehicle be towed. Instead, P&S had towed her vehicle because the police directed them to do so. The court decided that the FCRA can be relied upon by the party requesting the credit report, PCA in this instance, "only if the consumer initiates the transaction," and that this requirement is not satisfied simply because the consumer did something that led to the creditor's claim.

The other condition that grants a party, with rights to a debt, the right to obtain a credit report is if that party has taken the claim to court and received a judgment against the debtor. If the debt has been judicially established then that constitutes a "credit transaction involving the consumer," regardless of how it arose. Here, PCA was not a judgment creditor. Its claim against Pintos did not result from a transaction initiated by Pintos so the FCRA did not give PCA the right to obtain her credit report.

Who can obtain a credit report and under what conditions?

As a result of this case, the conditions under which a creditor and/or non-creditor can obtain a consumer's credit report as an aid to its efforts to collect a debt have been somewhat abridged. Before continuing, this is a good time to summarize who is allowed to obtain a consumer's credit report and under what conditions. According to the Board of Governors of the Federal Reserve System in a publication titled "Credit Reports and Credit Scores", the following qualify:

- Lenders from whom the consumer is seeking credit.
- Lenders that have granted the consumer credit.
- Telephone, cell phone and utility companies that may provide services to the consumer.
- A consumer's employer or prospective employer only, however, if the consumer agrees.
- Insurance companies that have issued or may issue a policy for the consumer.
- Government agencies reviewing the consumer's financial status for government benefits.
- Anyone else with a legitimate business need for the information, such as a potential landlord or a bank at which the consumer intends to do business.

Credit bureaus can also furnish reports if required by a court order, or federal grand jury subpoena. Additionally, upon the consumer's written permission they can issue a report to any third party.

Who cannot obtain a credit report?

If you have rights to a debt for which the debtor did not "actively" initiate a credit transaction or provide permissible purpose, or you do not have a court ordered judgment against the debtor you are not entitled to obtain the debtor's credit data or credit report. Some examples of debts that fall into this category are:

Monies owed municipalities for:
- Parking violations
- Traffic tickets
- Towing and impound costs

Claims for healthcare that occur because:
- The patient did not have sufficient medical insurance to cover the entire cost of the services provided.
- The patient's insurance company decided they were not responsible for the service provided because it was not covered by the patient's policy.
- The patient's insurance company terminated their coverage and the patient was not aware of the termination at the time service was provided.

Obviously, if the nature of the debt you own does meet the standards of the FCRA with respect to obtaining a credit report and credit bureau data you'll need to find another alternative to increase your probability of collecting the monies due. In the next section, we will discuss such an alternative which has been found in practice to be superior for debt collection purposes whether or not a credit report is an option.

An alternative option to a credit report and credit bureau data

To review, if the debtor did not actively initiate a credit transaction, or you don't have a judgment, you can't legally obtain a credit report or credit bureau data. However, there is now a powerful solution available to organizations that provide information on the debtor, as well as potent debt recovery functionality. This tool enables your collections and provides both an estimate of the likelihood of any recovery, as well as relative estimates, across accounts, of how much you can expect to recover."

For purposes of discussing this alternative solution to a credit report and credit bureau data, let's consider the debt recovery process if the debt is healthcare related, noting however, that analogous procedures are available for other types of debts when a credit report is not an option.

This powerful debt recovery collection process utilizes debt type specific statistical modeling to identify the most likely payers in an extremely efficient manner, and the process does not require bureau data to produce accurate recovery incidence and recovery amount scores. In the instance of a healthcare related debt, the models leverage the predictive power of the patient guarantor's account data to quickly determine who is most likely to pay and relatively how much can be expected.

Some typical data elements utilized to generate informative reports and produce and validate a healthcare related recovery score are:

- Date of service
- Amount of last payment
- State
- Placement date
- Amount due
- Current balance
- Original account open date
- Medical debt type
- Last payment made
- Placement status
- Insurance claim status
- Other available data (optional)

Please note that the above data elements are not provided by a credit bureau or a credit report, but come from the creditor, collector or hospital's own database. Many informative reports can be made with these data elements, including: distribution of accounts by last payment date; distribution by placement status; distribution by days since service date; and so on. Furthermore, these same data elements and possibly others can be combined to determine a very accurate debt recovery score.

The addition of account scoring to your recovery efforts allows you to achieve certain benefits driven by improved profitability through more efficient use of data and collections personnel:

Specifically:

- Accounts are segmented based on relative expected recovery rates, which allows more effective application of collection strategies based on cost, effort and impact.
- More accurate decisions can be made at the account level because of the availability of reliable and validated statistical analysis.
- Accounts with the highest probability of collections can be identified and it is possible to accurately predict the amount to be collected.
- Because of the above characteristics it is possible to efficiently prioritize collection activity and agency management, thereby achieving better results at a lower cost.

Finally, note that if you do not use credit reports, the high cost of credit bureau data is eliminated.

Conclusion

Collectors today are confronted with legal restrictions, resource constraints and developing cost effective collection strategies. To overcome these challenges, organizations are increasingly turning to powerful debt recovery tools based on statistical modeling in an effort to focus resources on the most valuable accounts in the most efficient manner. A great benefit of this method is that it does not require bureau data to produce accurate scores, helping organizations better collect on their accounts.

It is important to note that while the Pintos ruling limits access to credit reports and credit bureau data, in certain instances, it does not affect a debt owner or hospital's ability to utilize a debt recovery tool based on advanced statistical analysis of debtor data contained in the creditor's own database, and other publicly available data sources.

There is now an advanced debt recovery tool on the market that provides organizations with superior collections recovery rates, regardless of whether or not credit reports and credit bureau data are available. Furthermore, there is no reason why a lack of access to credit reports and credit bureau data needs to prevent a debt owner or their agent from having access to: informative reports; accurate recovery scoring; and reduced data costs. Instead, advanced debt recovery tools empower collectors to leverage internal A/R data in a specific statisticalbased portfolio model, helping them to achieve higher recovery rates, more efficient utilization of collection resources and increased cash flow from collection operations.

To learn more about FIS' AvantGard Predictive Metrics solutions, visit **www.fisglobal.com/avantgard.**

The solution suite includes specific models to be used in both trade receivables and consumer debt. Consumer debt models have been developed specifically for debt buyers, agencies, hospitals, utility companies, telecom, and lease/finance management.

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