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THE FUNCTIONS OF CONSUMER REPORTING AGENCIES UNDER THE FAIR CREDIT REPORTING ACT—*Bryant v. TRW, Inc.*, 689 F.2d 72 (6th Cir. 1982).

I. INTRODUCTION

Consumer reporting agencies are in the business of receiving, storing, and disseminating consumers' credit records from and to creditors. The Fair Credit Reporting Act (FCRA)¹ requires that consumer reporting agencies adopt reasonable procedures to assure that information is transmitted accurately. Because the information originates with creditors, however, consumer reporting agencies have not been responsible for the inherent accuracy of items reported.

The Sixth Circuit recently held that consumer reporting agencies were more than conduits of information. In *Bryant v. TRW, Inc.*,² the court stated that consumer reporting agencies do not necessarily comply with the FCRA by simply accurately reporting information received from creditors.³

Bennie Bryant applied for a home mortgage with Hammond Mortgage Corp. and Hammond ordered a consumer credit report from TRW, Inc., a consumer reporting agency.⁴ TRW informed Hammond that its data bank contained four unfavorable items regarding Bryant's credit performance.⁵ When Bryant informed TRW that the items were false,⁶ TRW verified that the reported information was identical to the creditors' records.⁷ Hammond denied Bryant's mortgage application on the basis of the re-

1. 15 U.S.C. §§ 1681-1681t (1982). Congress enacted the FCRA in 1970. Act of Oct. 26, 1970, Pub. L. No. 91-508, tit. VI, 84 Stat. 1114, 1127-36.

2. 689 F.2d 72 (6th Cir. 1982).

3. *Id.* at 78.

4. *Id.* at 74.

5. *Bryant v. TRW, Inc.*, 487 F. Supp. 1234, 1236-37 (E.D. Mich. 1980), *aff'd*, 689 F.2d 72 (6th Cir. 1982). The report issued in this case was a mortgage credit report. The court noted that a "mortgage report" is a "consumer report" within the meaning of the FCRA. *Bryant*, 689 F.2d at 74 n.2. A mortgage report differs from a standard consumer credit report in that it involves verification of reported items. A standard consumer credit report is prepared by simply compiling all information that subscribing creditors have reported to the consumer reporting agency regarding the consumer. The consumer reporting agency does not verify any of this information before sending the report to the requesting creditor. Brief Amicus Curiae of the Federal Trade Commission at 5-6, *Bryant* [hereinafter cited as Brief of FTC]. In preparing the mortgage report, the agency directly contacts the consumer and each reporting creditor to verify the items in its file. After a spot check, the report is typed, checked by quality control, and mailed to the mortgage company. *Id.* at 6-7; *see also* Brief of Defendant-Appellant at 6-7, *Bryant*.

6. Brief of Plaintiff-Appellee at 7, *Bryant*.

7. *See* Reply Brief of Defendant-Appellant at 13, *Bryant*. The brief of plaintiff-appellee Bryant states that only two of the four creditors were telephoned during the verification process. Brief of Plaintiff-Appellee at 7-8.

port.⁸ Bryant sued TRW in federal district court, charging that TRW had violated the FCRA by failing to maintain reasonable procedures to ensure the accuracy of its credit report.⁹ The Sixth Circuit Court of Appeals upheld a jury verdict of \$8000 in actual damages for Bryant.¹⁰

This Note first reviews the purpose and function of a consumer reporting agency and discusses the provisions of the FCRA that pertain to consumer reporting agencies and judicial interpretations of those provisions. It then analyzes the *Bryant* decision in light of the policies behind the FCRA and criticizes the effect of the FCRA in sheltering reporting creditors. This Note concludes that the *Bryant* decision should be read narrowly to reflect the true spirit of the FCRA. Consumer reporting agencies must be permitted to function as mere conduits of information without incurring liability for inaccuracies over which they have no control. Finally, this Note recommends that the FCRA should be amended to make reporting creditors liable when they are the source of inaccuracies in consumer credit reports.

II. BACKGROUND

A. *The Consumer Credit Reporting Industry*

Consumer reporting agencies assist lenders and merchants in evaluating the credit worthiness of potential debtors. Upon request, an agency furnishes to credit grantors a report containing information on the payment history of a particular consumer. The agency obtains this information from reporting creditors, who regularly send the agency listings of the current payment status of their customers' accounts.¹¹ The report in-

8. *Bryant*, 689 F.2d at 75 (quoting *Bryant v. TRW, Inc.*, 487 F. Supp. 1234, 1237 (E.D. Mich. 1980)).

9. *Bryant*, 689 F.2d at 74. 15 U.S.C. § 1681e(b) (1982) states: "Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

10. *Bryant*, 689 F.2d at 80.

11. The information contained in the credit report is obtained from three sources: consumers, creditors, and public records. Much of the information reported by creditors, such as name, spouse's name, address, former address, employer, and former employer, is supplied by the consumer on his or her credit application. Other information is taken by the creditors from their ledgers. Some of the items are gathered by the consumer reporting agency from public records. Brief Amicus Curiae of Associated Credit Bureaus, Inc. at 3, *Bryant* [hereinafter cited as Brief of ACB]. This Note discusses only information received from reporting creditors.

Creditors that report to large computerized agencies, such as TRW, record their customers' account statuses on computer tapes. The information is then entered into the consumer reporting agency's data bank, where it is stored. Brief of FTC, *supra* note 5, at 5 (citing INSTITUTE OF INTERNAL AUDITORS. DATA PROCESSING CONTROL PRACTICES REPORT 61 (1977) and TOUCHE ROSS & CO. COMPUTER CONTROL AND AUDIT 82-86 (1976)). The agency may receive computer tapes from its reporting

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cludes information about a consumer's account with each of these creditors, such as the opening date, amount borrowed, the terms of the account, the date the information was reported to the consumer reporting agency, the amount owing at that date, and whether or not the account was current.¹²

Completed reports are disseminated to subscribing credit grantors.¹³ The consumer does not receive a copy of the completed report. Thus, if a consumer credit report contains inaccurate information, the consumer generally becomes aware of it only after he or she is denied credit as a result of the report.¹⁴ Until a consumer disputes the information in his or her consumer credit report, the consumer reporting agency acts merely as a conduit of information.¹⁵

B. The FCRA

The FCRA¹⁶ regulates the issuance of both consumer credit reports and investigative consumer reports.¹⁷ The FCRA protects consumers from

creditors only once a month. Thus, the information in its data base can be up to 30 days old. See Brief of FTC, *supra* note 5, at 6.

12. A consumer credit report generally begins with identifying information and then lists all the subscribing reporting creditors with whom the consumer has an account. When a subscribing creditor requests a credit report on a consumer, the consumer reporting agency compiles all the information it has in its data base concerning that consumer. Typical identifying information would be the consumer's name, address, employer, and his or her spouse's name. See sample credit reports of credit reporting agencies TRW, Inc. and Credit Northwest Corp. (copies on file with the *Washington Law Review*).

13. The reports are disseminated to subscribing creditors over the telephone, in writing, or by teleprinter in the creditor's office. Brief of FTC, *supra* note 5, at 5. Subscribing creditors are primarily retailers, banks, finance companies, mortgage lenders, and credit card issuers. Brief of ACB, *supra* note 11, at 3.

14. Consumers have a right to have the nature and substance of their files disclosed upon request whether or not they have been denied credit. 15 U.S.C. § 1681g (1982).

15. See *infra* pp. 411–12.

16. 15 U.S.C. §§ 1681–1681t (1982).

17. Consumer credit reports differ significantly from investigative consumer reports. See *id.* § 1681a(d)–(e). Consumer investigating agencies prepare reports that concern a person's character, reputation, personal characteristics, or mode of living, rather than his or her credit history. Instead of relying on reports from subscribers, consumer investigating agencies obtain information by conducting personal interviews with the subject's neighbors, friends, or associates. Investigative consumer reports are sensitive because they report on a consumer's character and reputation. For this reason, and also because neighbors and associates are often the sources used, investigative consumer reports have generated the most flagrant invasions of consumers' privacy. See *Millstone v. O'Hanlon Reports, Inc.*, 528 F.2d 829, 831, 834 (8th Cir. 1976) (report based on untrue information obtained from one neighbor claiming that the subject was a "hippie-type" and "suspected . . . drug user"). Investigative consumer reports are generally used by prospective employers, insurers, and landlords to decide whether or not to hire, insure, or rent to a subject consumer. Comment, *Fair Credit Reporting Act: Constitutional Defects of the Limitation of Liability Clause*, 11 HOUS. L. REV. 424, 424 n.3

unfair credit reporting methods and enables credit grantors to obtain necessary information.¹⁸ The FCRA attempts to balance the need for fast, accurate credit reports with the practicalities of operating a consumer reporting agency.¹⁹ It does so by requiring reasonable procedures designed to ensure maximum possible accuracy of reports,²⁰ rather than by demanding 100% accuracy.²¹ It also permits consumers to correct any inaccurate information contained in credit reports.²²

1. Regulation of Consumer Credit Reporting Under the FCRA

Upon denial of a consumer's application for credit, the creditor must notify the consumer of the name and address of the consumer reporting agency that furnished the report.²³ At the request of the consumer, the consumer reporting agency must disclose the nature and substance of the report.²⁴ If the consumer disputes the accuracy of the report, the consumer reporting agency must conduct a "reinvestigation," note the current information, and delete any incorrect or unverifiable information.²⁵

A consumer who is dissatisfied with the results of the reinvestigation can file a brief summary of the dispute with the consumer reporting agency.²⁶ The agency must note the dispute on subsequent credit reports.²⁷ The consumer may also bring suit against the consumer reporting

(1974). They are not intended to assist credit grantors in evaluating the credit worthiness of a credit applicant.

18. See 115 CONG. REC. 33,408 (1969) (remarks of Sen. Proxmire). See also 15 U.S.C. § 1681(a)(4) (1982) (congressional finding of need for consumer reporting agencies to act fairly and responsibly).

19. See generally 115 CONG. REC. 33,408, 33,408-10 (1969) (remarks of Sen. Proxmire).

20. 15 U.S.C. § 1681e(b) (1982). "The procedures established in the bill assure the free flow of credit information while at the same time they give the consumer access to the information in his credit file so that he is not unjustly damaged by an erroneous credit report." S. CONF REP [To accompany S. 823], 91st Cong., 1st Sess. 2 (1969), reprinted in R. CLONTZ, FAIR CREDIT REPORTING MANUAL app. B-3, at B-17 (rev. ed. 1977).

21. Senator Proxmire stated: "Given the inherent difficulties involved in collecting, storing, and distributing information, it is unrealistic to expect 100 percent accuracy." 115 CONG. REC. 2410, 2411 (1969).

22. 15 U.S.C. § 1681i (1982).

23. *Id.* § 1681m(a).

24. *Id.* § 1681g(a)(1).

25. *Id.* § 1681i(a). The FCRA's use of the term "reinvestigation" is a misnomer for consumer reporting agencies. While the term is relevant to consumer investigating agencies who must "investigate" to prepare an initial report, a consumer reporting agency does no initial investigation but merely compiles a report from information on file from reporting creditors. The term as it applies to consumer reporting agencies should be a requirement of "investigation" when a consumer disputes a report.

26. *Id.* § 1681i(b).

27. *Id.* § 1681i(c).

agency for negligent or willful noncompliance with the FCRA.²⁸ The consumer may not, however, sue the reporting creditors for defamation, invasion of privacy, or negligence with respect to any information reported to the consumer reporting agency unless there is proof of malice or willful intent to injure the consumer.²⁹

A consumer who sues a consumer reporting agency typically alleges that the agency did not follow reasonable procedures to ensure maximum possible accuracy of its credit report.³⁰ Because the FCRA neither describes reasonable procedures nor gives rulemaking authority to any government agency,³¹ the courts have had to define the parameters of the reasonableness standard.

2. *Judicial Interpretation of “Reasonable Procedures”*

Courts use a two-step analysis to determine whether a consumer reporting agency has violated the “reasonable procedures” requirement of the FCRA. The threshold question is whether the report is accurate. The substantive accuracy of the report is a complete defense to a claim that the agency’s procedures were inadequate.³²

If a report is found to be substantively inaccurate, the next step is to determine whether the procedures used to compile the report were reasonable and designed to achieve maximum possible accuracy.³³ The agency is liable only if the court finds that reasonable procedures were not used.³⁴

Courts have differed on the issue of what constitutes reasonable pro-

28. If a consumer reporting agency is found to have willfully violated the FCRA, it is liable for actual and punitive damages plus court costs and attorney’s fees. *Id.* § 1681n. Liability for negligent noncompliance is limited to actual damages plus court costs and attorney’s fees. *Id.* § 1681o.

29. *Id.* § 1681h(e).

30. Section 1681e(b) requires that reasonable procedures be used in the preparation of reports. *Id.* § 1681e(b).

31. The Federal Trade Commission was given procedural, investigative, and enforcement powers, except to the extent that enforcement powers were specifically committed to another government agency. *Id.* § 1681s(a).

32. See *Todd v. Associated Credit Bureau Servs., Inc.*, 451 F. Supp. 447, 449 (E.D. Pa. 1977) (report was accurate even though it reported information three years old and did not show that the situation had changed in the interim), *aff’d mem.*, 578 F.2d 1376 (3d Cir. 1978), *cert. denied*, 439 U.S. 1068 (1979); *Middlebrooks v. Retail Credit Co.*, 416 F. Supp. 1013, 1015–16 (N.D. Ga. 1976) (report was accurate even though it reported that plaintiff had been arrested for gambling but did not note that there was no ultimate disposition of the charge).

Some courts have held that a report was accurate if it was an accurate rendition of what the creditor showed on its books, even when the creditor’s books were not substantively correct. See *Colletti v. Credit Bureau Servs., Inc.*, 644 F.2d 1148, 1151 (5th Cir. 1981), discussed *infra* notes 38 & 70; *Roseman v. Retail Credit Co.*, 428 F. Supp. 643, 646 (E.D. Pa. 1977), discussed *infra* note 70.

33. See 15 U.S.C. § 1681e(b) (1982).

34. *Bryant*, 689 F.2d at 78; *Hauser v. Equifax, Inc.*, 602 F.2d 811, 814 (8th Cir. 1979); *Austin v. Bankamerica Serv. Corp.*, 419 F. Supp. 730, 733 (N.D. Ga. 1974).

cedures for a consumer reporting agency. In one of the earliest cases, *Miller v. Credit Bureau, Inc.*,³⁵ the Superior Court of the District of Columbia held that a consumer reporting agency must verify adverse information when it receives it.³⁶ No other court has required a consumer reporting agency to verify the truth of adverse information at its reception. Rather, other courts have been concerned with whether an agency accurately relays both favorable and unfavorable information it receives.

Despite claims by consumers that consumer reporting agencies do not include sufficient information to give a true picture of consumers' accounts, courts have been reluctant to hold agencies to an affirmative duty to investigate the reported information.³⁷ Courts have also been unwilling to require consumer reporting agencies to update information on their own initiative.³⁸ Few courts other than those in *Miller* and *Bryant* have found that a consumer reporting agency's procedures were unreasonable. These few decisions involved agencies that allowed consumers' files to become intermixed through inadequate data processing procedures.³⁹ Until *Bryant*, courts did not interpret the reasonable procedures requirement to apply to the substance of a credit report as long as the report accurately relayed information reported to the agency.

35. No. SC-29451-71 (Super. Ct. D.C. June 22, 1972) (unreported decision), summarized in [1969-1973 Transfer Binder] CONSUMER CRED. GUIDE (CCH) ¶ 99,173.

36. *Id.* ¶ 99,173, at 89,068. The *Miller* court found the consumer reporting agency negligent for reporting erroneous information regarding the plaintiff's bank account and hospital bill. The court also stated that the report should have contained certain positive information such as the fact that the plaintiff apparently had a responsible position with the United States House of Representatives. *Id.* at 89,069.

37. In one case, a consumer reporting agency was held to have no affirmative duty to investigate the fact that a prior lawsuit against the consumer was brought against him in his official capacity as a deputy marshal and not as a private citizen. *Austin v. Bankamerica Serv. Corp.*, 419 F. Supp. 730, 732-33 (N.D. Ga. 1974).

38. Consumer reporting agencies have not been required to include that a reported bankruptcy was later dismissed, *McPhee v. Chilton Corp.*, 468 F. Supp. 494, 497 (D. Conn. 1978), that an account reported as a charge-off was subsequently collected by a collection agency, *Todd v. Associated Credit Bureau Servs., Inc.*, 451 F. Supp. 447, 448-49 (E.D. Pa. 1977), *aff'd mem.*, 578 F.2d 1376 (3d Cir. 1978), *cert. denied*, 439 U.S. 1068 (1979), and that there was no ultimate disposition of a reported gambling arrest, *Middlebrooks v. Retail Credit Co.*, 416 F. Supp. 1013, 1014-16 (N.D. Ga. 1976).

In *Colletti v. Credit Bureau Servs., Inc.*, 644 F.2d 1148 (5th Cir. 1981), an agency issued a credit report that included adverse information reported six months earlier. In the interim, the consumer had resumed payments on the account at issue, but the reporting creditor had not notified the agency of that fact. *Id.* at 1150. The court held that the consumer reporting agency used reasonable procedures in reporting the information. *Id.* at 1151.

39. See *Thompson v. San Antonio Retail Merchants Ass'n*, 682 F.2d 509, 513 (5th Cir. 1982) (consumer reporting agency found liable when its computer program did not require sufficient contact points to assure that incoming tapes from reporting creditors were correctly matched to the right consumer's file); *Morris v. Credit Bureau, Inc.*, 563 F. Supp. 962, 968 (S.D. Ohio 1983) (credit bureau held liable for negligently failing to reconcile inaccurate file with a second file which had been corrected at the consumer's instance).

III. THE *BRYANT* COURT'S REASONING

At issue in *Bryant v. TRW, Inc.* was the scope of the FCRA provision requiring agencies to “follow reasonable procedures to assure maximum possible accuracy” in preparing a consumer report.⁴⁰ The court concluded that the FCRA requires a consumer reporting agency to do more than correctly report the information it receives from subscribing creditors.⁴¹

The court stated that Congress envisioned consumer reporting agencies as more than conduits of information and that TRW did not comply with the FCRA by simply accurately reporting credit information.⁴² The court gleaned this broad reading of the FCRA from two House amendments to the FCRA adopted by the conference committee.⁴³

One amendment extended the applicability of the reasonable procedures requirement to include consumer reporting agencies as well as consumer investigating agencies.⁴⁴ The court inferred that because consumer investigating agencies are more than conduits of information, consumer reporting agencies are also more than conduits of information.⁴⁵ The other amendment cited by the court changed the standard of negligence for imposing liability on consumer reporting agencies from gross to ordinary.⁴⁶ The court stated that this change represented congressional rejection of the imposition of a nominal standard of care.⁴⁷

The court also suggested procedures that TRW should have followed on the two inaccurate items which were dispositive of the case.⁴⁸ The court suggested that (1) TRW should have asked the reporting creditor how it determined that Bryant was delinquent, and (2) under the FCRA, TRW had to do more than merely verify the information with the reporting creditor after Bryant challenged it.⁴⁹ The court stated that TRW

40. 15 U.S.C. § 1681e(b) (1982).

41. *Bryant*, 689 F.2d at 77.

42. *Id.* at 78.

43. *Id.* at 77–78. The amendments are discussed in CONF. REP. NO. 1587, 91st Cong., 2d Sess., reprinted in 1970 U.S. CODE CONG. & AD. NEWS 4411, 4415–16 [hereinafter cited as CONF. REP.].

44. CONF. REP., *supra* note 43, at 4415.

45. *Bryant*, 689 F.2d at 78.

46. CONF. REP., *supra* note 43, at 4416.

47. *Bryant*, 689 F.2d at 78.

48. *Id.* at 76–77, 79. One of the items listed Bryant as 30 days delinquent on a revolving time payment account. With such an account, any amount paid above the minimum required payment reduces the balance but is posted as only one payment. An account cannot be prepaid. Bryant made a double payment in July which the creditor credited as only one payment. Another item indicated that, as of September 2, Bryant had last paid on his account on August 15. However, before September 30, when the report was issued, Bryant had made two more payments. The other two derogatory items were not crucial to the outcome of the case. *Id.*

49. *Id.* at 79.

should have asked if any payments had been made after the date of the report and advised the creditors of Bryant's complaints.⁵⁰

IV. ANALYSIS

The FCRA permits a consumer reporting agency to function merely as a conduit of information until a consumer disputes information in his or her credit report and triggers an investigation. Broadly read, the *Bryant* decision requires a consumer reporting agency to assume liability for the inherent accuracy of its reports.⁵¹ The *Bryant* court's holding, however, fails (1) to differentiate between consumer reporting agencies and consumer investigating agencies,⁵² and (2) to consider the practicalities of operating a consumer reporting agency.⁵³ The holding also exposes a fundamental weakness of the FCRA: the Act shelters a reporting creditor from liability, even when it is the source of the inaccurate information.⁵⁴

A. Responsibilities of Consumer Reporting Agencies Under the FCRA

The *Bryant* decision requires a consumer reporting agency to meet the same requirements as a consumer investigating agency. The decision also implies a standard of strict liability on consumer reporting agencies. Such a holding is contrary to the intent of the FCRA and overlooks the clear distinction between consumer reporting agencies and consumer investigating agencies.

1. Congressional Intent in Passing the FCRA

The *Bryant* court used limited legislative history as the sole authority to support its broad reading of the FCRA.⁵⁵ In citing the House amendment

50. *Id.* The court was not persuaded by TRW's argument that it had eventually corrected all inaccuracies in the credit report because the corrections were made after the mortgage company's rejection of Bryant's loan application. TRW was therefore liable for Bryant's frustration and the denigration of his name and credit worthiness. *Id.*

51. Bryant's credit report from TRW does not fit neatly into the FCRA. The FCRA talks in terms of requiring reasonable procedures in the preparation of a report, and requiring reinvestigation and update of a report if it is disputed by a consumer. 15 U.S.C. §§ 1681e(b), 1681i(a) (1982). Technically, the *Bryant* report was the initial report and not the result of a reinvestigation. TRW telephoned Hammond Mortgage Corp. to advise Hammond of the derogatory items in TRW's file on Bryant prior to compiling the credit report. *Bryant*, 689 F.2d at 75. Bryant disputed the information in the credit report before a written report was actually issued. *Id.*

52. See *infra* notes 64–69 and accompanying text.

53. See *infra* notes 70–72 and accompanying text.

54. See *infra* notes 83–90 and accompanying text.

55. *Bryant*, 689 F.2d at 77–78; see also *supra* notes 43–47 and accompanying text. See generally

that subsumed consumer reporting agencies under the reasonable procedures requirement of 15 U.S.C. § 1681e(b),⁵⁶ the court overlooked the full intent of the House conferees in offering the amendment. The amendment requires that consumer reporting agencies, as well as consumer investigating agencies, follow reasonable procedures.⁵⁷ It further requires that consumer reporting agencies differentiate between types of bankruptcies in their credit reports and note the disposition of consumers' wage earner plans.⁵⁸ These changes have led some courts to assume that the reasonable procedures requirement for consumer reporting agencies requires only that agencies differentiate between types of bankruptcy cases.⁵⁹ Thus, the intent of 15 U.S.C. § 1681e(b) may be narrower than the *Bryant* court suggested.

The *Bryant* court's reliance on the changing of the negligence standard was equally misplaced. While this second amendment lowered the standard for imposing liability from gross to ordinary negligence,⁶⁰ the new standard does not impose strict liability. A strict liability standard assesses fault when there is blame on neither side but one side must bear the loss in the interest of justice.⁶¹ In *Bryant*, neither Bryant nor TRW

Note, *The Fair Credit Reporting Act*, 13 SUFFOLK U.L. REV. 63, 67 n.17 (1979) (summarizing merger legislative history of the FCRA).

56. *Bryant*, 689 F.2d at 77-78; see also CONF. REP., *supra* note 43, at 4415.

57. See CONF. REP., *supra* note 43, at 4415. During the debates on the proposed legislation, Senator Proxmire stated: "The Senate bill required reporting agencies who prepared investigative reports to follow reasonable procedures to assure the maximum possible accuracy of such report [sic]. The House conferees felt that this requirement should be extended to all reporting agencies, whether they prepared investigative reports or conventional credit reports." 116 CONG. REC. 35,937, 35,940 (1970).

58. The conference report on the amendment reads as follows:

The House offered an amendment, which was agreed to by the conferees, to add the requirement that consumer reporting agencies must follow reasonable procedures to assure maximum possible accuracy of the information on an individual in all consumer credit reports.

The House conferees intend that this requirement shall include the duty to differentiate between types of individual bankruptcies (e.g., between straight bankruptcies and chapter XIII wage earner plans), and that the disposition of a wage earner plan where the consumer conscientiously carries out his responsibilities under it should be duly noted.

CONF. REP., *supra* note 43, at 4415.

59. In *McPhee v. Chilton Corp.*, 468 F. Supp. 494, 496 (D. Conn. 1978) (footnote omitted), the court noted, "[t]he legislative history of the Act shows, for example, that § 1681e was intended to require reporting agencies to differentiate between types of individual bankruptcies and to note the disposition of a wage earner plan."

60. CONF. REP., *supra* note 43, at 4416. This provision amended what was to become 15 U.S.C. § 1681o (1982).

61. W. PROSSER, HANDBOOK OF THE LAW OF TORTS 494 (4th ed. 1971).

was to blame,⁶² yet the court required TRW to assume the liability.⁶³ Thus, the court imposed strict liability when the statute requires a finding of ordinary negligence.

2. *Functioning of a Consumer Reporting Agency*

The *Bryant* court also overlooked the difference between a consumer reporting agency and a consumer investigating agency. The functions of the two differ significantly.⁶⁴ A consumer investigating agency gathers its information by conducting field interviews with the subject's neighbors, friends, or associates.⁶⁵ A consumer investigating agency can implement internal procedures to assure the accuracy of items it reports.⁶⁶ A consumer reporting agency lacks that degree of control over the information it gathers. It depends on the veracity of its reporting creditors and cannot double-check with a second source.⁶⁷

The *Bryant* decision imposes a standard that may be reasonable for a consumer investigating agency but is not reasonable for a consumer reporting agency. It is not surprising that the court was unable to give guidelines to effectuate that standard. The court simply stated that a consumer reporting agency may be required to do more than accurately report information received from creditors.⁶⁸ It is unclear what more is required and under what circumstances.⁶⁹

62. The problem at issue in *Bryant* was that two of the items in the credit report were not accurate. *Bryant*, 689 F.2d at 76. The inaccuracies originated with the reporting creditors. *Bryant* was certainly not to blame for errors in the reporting creditors' books. Given the generality of *Bryant's* complaint to TRW, *see supra* text accompanying note 6, TRW conducted a reasonable investigation before it issued the report, *see supra* note 7 and accompanying text.

63. *Bryant*, 689 F.2d at 79.

64. One writer has recommended bifurcation of the FCRA because of the difference between investigative consumer reports and consumer credit reports. *See Comment, Fair Credit Reporting Act: The Case for Revision*, 10 LOY. L.A.L. REV. 409, 423 (1977).

65. *See Comment, supra* note 17, at 424 n.3.

66. For example, if neighbor A says that Joe is a drunk, the investigator can, at the very least, question neighbor B as a second source. The Federal Trade Commission recommends: "Whenever possible, adverse information should be verified by more than one source." DIVISION OF CONSUMER CREDIT & SPECIAL PROGRAMS, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMM'N, COMPLIANCE WITH THE FAIR CREDIT REPORTING ACT 576 (2d ed. 1973), *reprinted in* R. CLONTZ, *supra* note 20, app. C-2, at C-20.

67. For example, if creditor A reports that Joe's account with it is 60 days delinquent, the consumer reporting agency must rely on that report. Creditor A is the sole source of that information.

68. *Bryant*, 689 F.2d at 78. In *Bryant*, the court's holding that more was required of this consumer reporting agency was based on its specific findings that (1) TRW was aware of *Bryant's* troubled credit history, and (2) *Bryant* complained to TRW about items in the report. *Id.* at 78-79.

69. It is not clear from the decision whether knowledge of a consumer's dispute puts a consumer reporting agency on notice that it is therefore responsible for the inherent accuracy of anything it reports about that consumer. In addition, the decision may require a consumer reporting agency to

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Courts have recognized the inappropriateness of requiring a consumer reporting agency to ensure the inherent accuracy of the information in its files.⁷⁰ Courts have protected the function of a consumer reporting agency as a conduit of information by holding it liable only for failure to employ reasonable procedures in gathering or relaying information.⁷¹ Courts have held that if the information in a credit report is an accurate rendition of what the creditor reported to the agency, it is unnecessary to reach the issue of reasonable procedures.⁷²

TRW not only accurately reported the information it had received from reporting creditors but also investigated the disputed items after Bryant brought them to TRW's attention.⁷³ If Bryant was dissatisfied with the results of the investigation, he should have filed a summary of the dispute, which, under the FCRA, TRW would have had to include on the subsequent report to Hammond.⁷⁴ The FCRA contemplates resolution of consumer disputes through investigation by the agency and filing of a complaint summary by the consumer. Because TRW satisfied its investigation duty, the court should have inquired into Bryant's failure to follow FCRA procedures by taking advantage of his right to file a summary of the dispute.

Viewing consumer reporting agencies as mere conduits of information until a consumer disputes information in his or her credit report does not emasculate the FCRA. The reasonable procedures clause is applicable to the methods of gathering, storing, and reporting the information. If a creditor relays information to a consumer reporting agency and the agency accurately files and reports the information, the agency should not be liable if what the creditor reported is untrue. The FCRA need not and should not be construed to also require a consumer reporting agency to ensure the inherent accuracy of the information it relays from reporting creditors to others.

flag a consumer's file whenever that consumer complains about the contents of the credit report and then take some sort of action before issuing subsequent reports.

70. In *Roseman v. Retail Credit Co.*, 428 F. Supp. 643, 646 (E.D. Pa. 1977), the court held that because the agency accurately reported what was in the official records of its source of information, the credit report was accurate and the consumer reporting agency had complied with the purpose of the FCRA. "[D]efendant's reports accurately stated the information contained in [the former employer's] records. . . . [D]efendant's reports were accurate and therefore complied with the purpose of the Act." *Id.*

Similarly, in *Colletti v. Credit Bureau Servs., Inc.*, 644 F.2d 1148, 1151 (5th Cir. 1981), the court stated: "The report furnished by CBS [consumer reporting agency] in April of 1977 to Hibernia [requesting creditor] was an accurate record of the information provided to CBS by Mintz [reporting creditor]." The court therefore concluded that the agency had not violated the FCRA. *Id.*

71. See *supra* note 39 and accompanying text.

72. See *supra* note 70.

73. See *supra* notes 6-7 and accompanying text.

74. 15 U.S.C. § 1681i (1982).

Requiring consumer reporting agencies to act as more than conduits of information could create serious problems both before and after issuance of a report. For example, agencies would have to develop a system to verify each item of information when it was received from the reporting creditor. Even if items were required to be verified only when compiled in a report to a creditor, the task would be monumental. Consumer reporting agencies issue 200 million reports annually.⁷⁵ A report that had previously been available in minutes could require days or weeks to complete. The cost of the report would also increase to cover the additional processing by agency employees.⁷⁶

Some consumers may be willing to accept this delay in the processing of their loan applications and the increased costs in order to receive more thoroughly researched reports. However, such consumers have had the option of requesting that type of report for many years prior to the *Bryant* decision.⁷⁷ Moreover, it is uncertain whether and to what extent the additional verification and investigation procedures employed in preparing such reports actually increase accuracy. Verification prior to issuance of a report may expose an error that a creditor made when transferring data from its books to the computer tape sent to the agency. It may also allow the agency to update information regarding an account. However, a verification process does not reveal errors that a creditor has made in its books, such as misposting a payment which results in incorrectly showing a consumer as delinquent.

Under the FCRA, a consumer reporting agency is required to verify data when a consumer notifies it of an error in a report.⁷⁸ Even then, a consumer reporting agency's attempts to get accurate information regarding the status of the account may be futile. If the consumer provides specific information, such as the date on which he or she made payments subsequent to the creditor's report date, then the agency has a fair chance of getting to the heart of the dispute in its investigation efforts. If, on the other hand, a consumer merely says that the report is false, as Bryant did,⁷⁹ the agency can do little more than communicate this general claim of falsity to the reporting creditor in the context of requesting verification.

At best, the consumer reporting agency becomes an intermediary be-

75. Brief of ACB, *supra* note 11, at 4.

76. In an automated system, when a creditor orders a report on a consumer, the consumer reporting agency reports the latest information in its file on that consumer. The report is printed out by the computer and can usually be available to the creditor in a matter of minutes. If a consumer reporting agency were required to verify information prior to reporting it, an employee of the consumer reporting agency would have to telephone or write each creditor and inquire as to the consumer's status.

77. An example of such a report is the mortgage report. *See supra* note 5.

78. 15 U.S.C. § 1681i (1982).

79. Brief of Plaintiff-Appellee at 7, *Bryant*.

tween two parties to a dispute. At worst, it becomes an ill-equipped judge or mediator of a dispute when it must determine which side will prevail in the final report.

B. Sheltering Reporting Creditors

1. Limitations of Present System

Bryant exemplifies the inefficiency and inequity the FCRA creates when it shelters a reporting creditor from liability⁸⁰ and compels a consumer to instead take action against a consumer reporting agency. When *Bryant* told TRW that items in its report were false, TRW verified the items with the creditors.⁸¹ *Bryant* then brought specific problems pertaining to the accounts to TRW's attention by producing cancelled checks and payment histories. TRW relayed that information to the creditors, who eventually got the updated accurate information to TRW.⁸²

If *Bryant* had gone directly to the reporting creditors, the source of the inaccurate information, after he became dissatisfied with TRW's investigation, the dispute might have been settled with more expediency. The present system discourages such an attempt. The FCRA interposes the consumer reporting agency between the consumer and creditor in resolving a disagreement. It also effectively blocks a consumer from bringing suit against the reporting creditor.⁸³ This leaves a consumer looking to the consumer reporting agency for a remedy. Under the *Bryant* decision, it also leaves the consumer reporting agency liable even though the agency accurately relayed the information reported to it.

After a consumer reporting agency has investigated disputed information and accurately reported any changes, the FCRA currently leaves a consumer with four alternatives. First, he or she can file a written summary of the dispute with the consumer reporting agency.⁸⁴ This alternative may give an incomplete picture of the dispute, however, because the

80. The FCRA bars consumers from bringing actions against reporting creditors for defamation, invasion of privacy, or negligence based on information disclosed to consumers by (1) the consumer reporting agencies under 15 U.S.C. §§ 1681g or 1681h (1982), or (2) users of credit reports under 15 U.S.C. § 1681m (1982). *Id.* § 1681h(e). It would seem that the only way to circumvent this statutory immunity would be if a consumer somehow learned of information in his or her credit report from a source other than a consumer reporting agency or a creditor denying the consumer's credit application. However, it is unlikely that a consumer could discover the information on his or her credit report from other sources.

81. There is some dispute as to whether all four of the creditors were contacted. *See supra* note 7. Two items on which the jury could have based its finding of liability were verified. *Bryant*, 689 F.2d at 75 n.3, 76-77.

82. *Bryant*, 689 F.2d at 79; Brief of Defendant-Appellant at 13.

83. *See supra* note 80 and accompanying text.

84. 15 U.S.C. § 1681i(b) (1982).

agency may limit the statement to not more than 100 words.⁸⁵ The statement may also unfairly bias future creditors who may see the consumer as a troublemaker.

Second, a consumer can return to the consumer reporting agency with further proof of his or her claim. This alternative is undesirable because it thrusts the ill-equipped agency into the position of mediator or judge. The agency must depend on the reporting creditor to know the creditor's own books. Furthermore, a consumer must be sufficiently sophisticated to clearly set out the essential elements of the dispute. An agency could be confronted by a consumer waving cancelled checks to prove payment and a creditor stoutly asserting that its records indicate that no payment was made.⁸⁶

Third, a consumer can sue the consumer reporting agency, as Bryant did. A consumer reporting agency is liable under ordinary negligence standards.⁸⁷ Finally, a consumer can sue the reporting creditor, but only if the consumer can prove that the false information was furnished with malice or willful intent to injure.⁸⁸ The FCRA encourages actions against consumer reporting agencies rather than against reporting creditors by sheltering creditors and by awarding attorney's fees in successful actions against consumer reporting agencies.⁸⁹

The FCRA's partial statutory immunity for reporting creditors leaves the consumer to either prevail in court against the consumer reporting agency or effectively be barred from remedy.⁹⁰ A creditor that reports false information because of sloppy bookkeeping procedures is immune from suit. Yet a consumer reporting agency, under *Bryant*, may be held

85. *Id.*

86. Cancelled checks do not necessarily prove a consumer's case. Revolving accounts, such as the Hudson's account in *Bryant*, require at least a minimum monthly payment. 689 F.2d at 76. Anything paid over that amount is still credited as only one month's payment. In this sense, a revolving account cannot be prepaid. When Bryant made double the minimum payment in July, it was recorded as satisfying only the July obligation, with payment due again in August. If Bryant showed his cancelled check to TRW, Hudson's would still report that Bryant was delinquent according to its accounting system. When the account was opened, Bryant should have received a copy of the terms of repayment indicating how Hudson's expected payment. See Regulation Z, 12 C.F.R. § 226.5 (1983) (requiring disclosure to consumers of the procedures for imposing finance charges). TRW was the blind party to the transaction but was nevertheless thrust into the position of unraveling the dispute.

87. 15 U.S.C. § 1681o (1982).

88. *Id.* § 1681h(e).

89. *Id.* §§ 1681n(3), 1681o(2).

90. In *Freeman v. Southern Nat'l Bank*, 531 F. Supp. 94 (S.D. Tex. 1982), a consumer sued a bank under the FCRA for supplying false information to a consumer reporting agency. The suit was dismissed. The court held that the bank was not a consumer reporting agency under the FCRA and that, by reporting information to a consumer reporting agency, it did not make a consumer credit report. *Id.* at 95-96. The court stated that the consumer's remedies were to gain access to the report and require a reinvestigation, or to sue the bank if the consumer could overcome the bank's qualified immunity from common law actions under the FCRA. *Id.* at 96.

liable despite careful internal procedures to ensure that information is accurate. The goal of accurate reports is best met by placing liability on the party able to remedy the inaccuracies.

2. Recommended Allocation of Liability

It is unclear why the FCRA shelters creditors from liability. In order to advance the accuracy of reports and to fairly allocate the risk of error, the reporting creditors should not enjoy such a statutory privilege. Of the three parties who can bear the risk of loss due to inaccurate consumer credit reports, consumers are in the weakest position.

An inaccurate report can cause a consumer substantial cost both in the denial of credit and in the denigration of his or her good credit rating. The consumer's remedy under the FCRA of working through the consumer reporting agency is effective only when an error results because an agency inaccurately relayed information. If the dispute is with the reporting creditor, however, the consumer reporting agency's intermediary position can actually hinder resolution of the dispute.

Both a consumer reporting agency and a reporting creditor are in better positions than a consumer to bear the risk of loss caused by inaccurate information. A consumer reporting agency should continue to bear the risk for unreasonable procedures in compiling or disseminating information. The reporting creditor, however, should bear the risk when its false information leads to an inaccurate report.

The goal of accurate reports is not effectively met when a consumer reporting agency must assume liability for the inaccuracy of information reported to it. Because the reporting creditor is the only source of the consumer reporting agency's information, the agency has no control over the accuracy of the information it receives. An agency can take few measures to protect itself against the errors of reporting creditors. If an agency discovers that a reporting creditor has submitted inaccurate information, the agency can drop that creditor from the system, refuse to accept any further credit information from it, and deny its requests for credit reports. It can also fine reporters of inaccurate information or pass on its costs of liability to the creditors through higher service fees. However, these measures may not be economically feasible in a competitive market. These measures also insert a third party in an action between a consumer and a reporting creditor, thus frustrating a fair allocation of risk.

If a creditor reports false information, it is in a better position to avoid the loss and should be assessed the liability. The goal of accuracy is best advanced when the source of the inaccuracy is made to bear the risk. Assumption of the risk provides an incentive to implement all possible pro-

cedures to ensure the accuracy of the information reported. Efficiency is increased when the intermediary, the consumer reporting agency, is eliminated and the consumer may take action directly against the source of the problem.

V. CONCLUSION

The *Bryant* decision should be read in its narrowest terms. A consumer reporting agency is a conduit of information until a consumer disputes information in a credit report and requests an investigation. After conducting a reasonable investigation and, if requested, noting the consumer's complaint on subsequent reports, the consumer reporting agency has fulfilled its obligations under the FCRA. At that point, a dissatisfied consumer should be allowed to pursue an action against a reporting creditor who refuses to correct an erroneously reported item.

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