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FEATURE ARTICLE

Understanding Credit Cards, Credit Reports, and Fraud

by David A. Szwak

The credit industry is trying to replace cash as a medium of exchange with a computerized credit and debit card system which would electronically transact all of our financial affairs and track our every move. Smart cards, the financial information superhighway, and complete absence of privacy appear to be in our future. It has been estimated that each American possesses an average of six credit card accounts. Every American needs to understand the credit system and its rapidly changing role in our lives.

Credit fraud is rampant and is growing exponentially in America. Almost twenty-five years ago, the United States Supreme Court noted that in 1969 alone, 1.5 million credit cards were lost or stolen, resulting in fraudulent charges exceeding $100 million.[1] Today, fraud equates to billions of dollars per year. Consumers bear these costs in the form of higher interest rates and fees. While the credit industry feels that credit issuers and merchants are the only victims, cases of fraud have proven far more detrimental to the consumer whose card(s), account(s), and/or personal identifier(s) have been used by the defrauder. This article provides an overview of credit cards, their usage, liability of cardholders and card bearers, credit fraud, credit reports and related topics.

What is a credit card?

Generally, "credit" is a contract between a consumer ("cardholder") and the credit issuer (bank, credit card company or other lender).[2] It results from an offer and an acceptance. The issuance of credit constitutes an "offer" of credit which may be withdrawn by the issuer at any time, for any lawful reason, prior to "acceptance" of the "offer" through the use of the credit card by the cardholder.[3] A "credit card" is merely an indication to merchants that the person who received the card has a satisfactory credit rating and, if credit is extended by the merchant, the issuer of the card will pay or insure that the merchant receives payment for the merchandise delivered. Furthermore, use of a credit card by the cardholder is an implied, if not actual, representation that the cardholder intends to pay the credit issuer for the charges made.[4]

Who is a cardholder?

The Truth-In-Lending Act ("the Act") defines "cardholder" as "any person to whom a credit

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card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person."[5] A "cardholder" is the person whose personal identifiers are listed on the application made to the credit issuer. The cardholder is not liable for fraud perpetrated through the use of his identifiers.[6] In addition, the cardholder is not liable for fraud committed through the misuse of his account number or credit card. The cardholder, as the party to the contract with the issuer, is solely responsible for charges.[7]

Only cardholders are contractually liable for debts incurred through the use of the credit card. Mere card users, bearers or holders of related cards, even if authorized to use the card, are not liable for such debts.[8] The same may not be true for co-applicants or subsequently added cardholders on the account which result in the creation of a joint account.[9] Arguments that a cardholder does not have authority to use the account have been unsuccessful. One court refused to limit a corporation's liability based upon alleged unauthorized use by an individual company officer who possessed and used the card[10] A cardholder, therefore, always has actual authority.[11] This holding blurred the distinction between cardholder and card bearer and may have been more properly decided upon a failure by the cardholder (corporation) to provide adequate notice of potential or real misuse of the account by a formerly authorized card bearer. Further, apparent authority factors may have been considered. The distinction between cardholder and card bearer has also been blurred in cases where people who received a credit card in their name, used the card, received the billings for charges, and later argued that they were not cardholders. At least one court found such a person to be a cardholder and imposed liability for the charges.[12]

Necessary investigation by credit issuer

Credit issuers usually rely upon applications to conduct their business. Credit issuers receive anywhere from a few to thousands of credit applications a day. In this high volume setting, it is imperative that procedures are in place to insure that the application is truthful and not fraudulent. American courts have consistently held that credit issuers have a duty to exercise reasonable care and diligence in performing a "necessary investigation" of each credit application received and that the investigation of each application occur prior to the issuance of credit.[13] As part of the investigation, the issuer must verify the underlying information on the application, including the applicant's identity and authority prior to the issuance of credit.[14] After all, credit issuers are in a superior position to prevent and stop credit fraud, particularly "application fraud," where the cardholder listed on the application never applied for or received the charge card or template.[15] In *Humble Oil & Refining Co. v. Waters*,[16] the court found the credit issuer liable for carelessly sending a credit card through the mail on the authority of an anonymous telephone caller. The credit issuer failed to use any reasonable procedures to verify the identity of the caller.

In fraud cases, courts have not held credit issuers strictly liable for approving fraudulent applications in the identity of the victim; however, issuers must exercise reasonable diligence and care to prevent such losses because approving fradualnt applications adversely affects all consumers and, particularly, the targeted victim of fraud.[17] Credit card issuers frequently have meager, automated procedures to investigate and evaluate applications and place greater emphasis on collection. Still, others have procedures in place, but employee apathy results in routine deviation from the guidelines. At least one court has held that a credit issuer's failure to follow its own proclaimed standards does not in itself prove negligence of the credit issuer unless the erroneous information in the application would have placed a reasonably prudent credit issuer on notice that the credit application was fraudulent.[18]

Investigation at the point of sale

It is uncertain why retailers and other merchants do not verify the identity of credit card users at the point of sale. Some have suggested a myth created by the credit industry caused this problem. The myth is that it is illegal to ask a card user to present identification at the point of sale. In reality, it is outright reckless conduct to tender merchandise to a card bearer without any verification and/or recording of personal identification.[19] Courts have ruled that retailers have a duty to exercise reasonable care to inquire about the identity of a purchaser using a charge card, to examine the charge card or template and to only extend credit as the card or template authorizes, rather than to merely disregard responsibility for resulting fraud.[20]

Truth-in-Lending Act does not apply if authority for use existed

The Truth-In-Lending Act ("the Act") provides consumers protection when fraud or unauthorized use of their credit card(s) occurs. If the court finds that the card bearer had "actual, implied or apparent authority" then the Act has no application,[21] and the cardholder's contract with the credit issuer and state law apply.[22] The defense of "unauthorized use" may apply in situations where the issuer sues the cardholder in an attempt to collect. In such situations, the credit issuer has the burden of proving that the particular use of the card was authorized.[23]

"Authorized use" versus "misuse" versus "unauthorized use"

Generally, when a cardholder under no compulsion by fraud or duress voluntarily permits the use of his credit card or account by another person, the cardholder has "authorized the use" of that credit card and account and is thereby liable for resulting charges, regardless of whether the cardholder verbally told the other person not to charge over a certain limit. As to the creditor, once you give authority to the third person, regardless of the scope, you are liable under agency principles.[24] "Misuse" occurs when the card bearer exceeds the authority granted by the cardholder and charges are eventually made which were not contemplated by the cardholder.[25] "Unauthorized use," for purposes of determining liability of a credit cardholder, is use of a credit card by a person who does not have actual, implied or apparent authority for such use and from which the cardholder receives no benefit.[26] Unauthorized use of a credit card occurs when a card bearer is not authorized and where there is no proof that the bearer was the cardholder's agent or that the cardholder ratified bearer's conduct.[27]

Courts are split on whether a cardholder can limit his exposure for charges attributable to a card bearer who has gone astray and misused the card "after the fact." The use was initially "authorized" with actual authority granted. One court has concluded that the user of a credit card–to whom the cardholder has given voluntarily use permission to–has "apparent authority" to use the card even after actual authority ceases to exist.[28]

The importance of notification to the credit issuer if misuse occurs

The law conflicts as to whether notice to the credit issuer that a card bearer has exceeded the authority granted and is in possession of a charge card will terminate responsibility for the charges occurring thereafter.[29] The dissent in *Walker Bank & Trust Co. v. Jones*[30] argued that notification should cut off liability for three main reasons: (1) credit issuers are in a superior position once notified of potential misuse to limit losses to the cardholder, the credit issuer itself and third parties (e.g., retailers, etc.); (2) 15 U.S.C. § 1643 and state laws of agency dictate that the agency ends upon the termination of authority by the cardholder as to the card bearer. In other words, the credit issuer cannot argue apparent authority once the credit issuer is on notice; and (3) holding the cardholder liable is unrealistic and promotes a divorcing spouse to usurp the other spouse's credit cards or account numbers for misuse with the knowledge that the law would hold the cardholder, e.g., the other spouse, liable.[31]

Once the credit issuer receives notice of potential misuse of an account, the issuer has the sole power to terminate the existing account, refuse to pay any charges on the account, list the credit card as stolen or lost on national/regional warning bulletins, transfer all existing, valid charges to a new account, and send the cardholder a new card bearing his new account number.[32] The credit issuer's situation is far better as a result of notification that a card has been lost, stolen or misused, because the issuer is made aware of the need to disallow charges or close the account and may even be alerted as to the whereabouts and identity of the card bearer.[33]

Courts have addressed situations where the misuser (card bearer) was still possessed the card and no notice was provided to the credit issuer. One court found that the charges made by the cardholder's ex-husband were authorized.[34] In that case, the husband was still in possession of one of the cards and, at all times, was seemingly authorized to make charges.[35] If the cardholder had explained the situation, the credit issuer would have prevented further misuse.[36] Another court applied an estoppel theory to preclude an employer's defense to liability for charges where the employer had provided charge cards to his employees for use and then failed to notify the credit issuer when he transferred the company.[37] On the other hand, one court held that a husband (cardholder) was not liable for his ex-wife's subsequent charges where the husband notified the creditor to close his account due to the fact that his ex-wife had a charge card, but the creditor failed to act.[38]

Courts have also imposed liability upon cardholders who create a situation of apparent authority for another to use the cardholder's credit card.

Implied or apparent authority

Courts have also imposed liability upon cardholders who create a situation of apparent authority for another to use the cardholder's credit card. Generally, "apparent authority" exists where a person has created an appearance of authority that causes a third party to reasonably believe that the individual has power to act on behalf of the cardholder.[39] Prior unrelated occasions where the cardholder allowed a third party to use his credit card have no bearing on specific, subsequent circumstances of unauthorized use.[40]

Courts tend to find the existence of apparent authority when a cardholder requests a credit card in a spouse's name and bearing a spouse's signature on the card. Such a representation to third persons, such as merchants, is tantamount to apparent authority that the spouse is authorized to use the card and make charges.[41] Additionally, courts have held that the mere transfer of the credit card to a spouse or other third party creates apparent authority, and the cardholder is estopped from denying liability.[42] However, one court questioned the existence of apparent authority when a credit issuer had been notified of potential misuse of a credit account.[43] The court queried as to how any apparent authority can exist between the cardholder (as principal) and the retailer, to whom the card is presented by an extranged spouse, when the credit issuer had been previously notified by the "principal" of the card theft.[44]

Cardholder's liability for unauthorized use

As a general rule, a cardholder is not liable for unauthorized credit card use except where the card is an "accepted credit card." In that situation, liability is not in excess of $50.00 only if and when: (1) the issuer provided the cardholder with adequate notice of the limited liability; (2) the issuer provided the cardholder with a description of the means by which the issuer may be notified of the loss or theft of the activated card; (3) the unauthorized use occurred before the card issuer had been notified that the cardholder no longer possessed the card or template; and (4) the issuer provided a method whereby the user of such card could be identified as a person authorized to use the charge template.[45]

Forgery and fraud

A cardholder is not liable for charges where another person forged the cardholder's name on a credit card application, and the cardholder knew nothing about the credit card until he received the bills.[46] Courts have acknowledged that cardholders have little or no control over the fraudulent conduct of third persons who come into possession of charge cards bearing the cardholder's identity. As a result, the cardholder is not liable for fraud-related charges unless fault is proven on the part of the cardholder.[47]

One court held that a defendant, who received an unsolicited bank card but never used it was not liable for purchases made with the card by a woman that the defendant subsequently married but became separated from two weeks later.[48] In that case, the woman took the card without the cardholder's knowledge.[49] The defendant never expressly or impliedly authorized her use of the card.[50] It appears the issuer would have violated 15 U.S.C. § 1642, if it had been in effect at the time the card was sent to the defendant.

Dissolution of marital property regimes and joint accounts

When joint credit account holders divorce, they should obtain the consent of their creditors before attempting to enter a dissolution of property decree wherein one spouse accepts the responsibility of a former joint account. This is important because both spouses remain liable on the account.[51] At least one court has rejected claims by a joint cardholder against a creditor whose credit report listed a bad joint debt due to her ex-husband's credit rating. The joint cardholder in this case, the ex-wife, attempted to recover against the creditor on the grounds that the dissolution of property decree freed her from liability for the joint credit charge account debts which her ex-husband agreed to assume in the dissolution.[52]

The Fair Credit Billing Act

The Fair Credit Billing Act ("FCBA")[53] sets forth an orderly procedure for identifying and resolving disputes between a cardholder and a card issuer as to the amount due at any time.[54] The FCBA only applies to transactions under open-end credit plans.[55] The consumer has a right to challenge a creditor's statement of an account in the consumer's name.[56] The FCBA provides protection to the consumer from the "shrinking billing period," which is the time within which to avoid the imposition of finance charges by the payment of the balance or portion of a debt.[57] The consumer has a right to make the creditor promptly post payments and credits to his account.[58] If the creditor fails to comply with the FCBA, the creditor is subject to forfeiture of its right to collect the disputed amount.[59] The consumer has the right to assert all claims and defenses against the credit card issuer which the cardholder has against the merchant honoring the card.[60]

Consumers have the right to bring a cause of action for actual damages sustained by the creditor who violates the FCBA, and the creditor must pay a civil penalty of twice the finance charge ($100 minimum, $1,000 maximum) plus court costs and reasonable attorney fees.[61] The FCBA provides for class action lawsuits.[62]

Ordinarily, a consumer must notify a creditor of alleged billing errors before bringing action under the FCBA.[63] The consumer is not required to send written notice of the billing error to the creditor where the creditor continues to report the account as delinquent when in fact it had been satisfied and the creditor had failed to send a periodic statement to the consumer.[64] In cases where the creditor must be notified, the 60 day notice period commences from the date the disputed statement is received by the debtor. The debtor must provide a written dispute within 60 days.[65]

Limitations of protection of FCBA

The FCBA has certain limitations which may apply under various circumstances. The consumer must provide the creditor with written notice within 60 days from the date the consumer receives the erroneous billing.[66] The notification must contain certain items of information, such as a complete identification of the consumer, account, bill and/or charges in question. It must also include an explanation of why the consumer thinks the bill is in error.[67]

Tort claims may not be asserted under the FCBA.[68] The consumer, or obligor must make a "good faith attempt" to satisfactorily resolve the disagreement with the person honoring the card.[69] The amount of the transaction must exceed $50.00.[70] The transaction must occur in the same state as the cardholder's mailing address or must occur within 100 miles of the cardholder's mailing address.[71] The amount of the claims or defenses asserted may not exceed "the amount of credit outstanding with respect to such transaction at the time the cardholder first notifie[d] the card issuer or the person honoring the credit card."[72] Payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of:

(a) late charges in the order of their entry to the account;
(b) finance charges in the order of their entry to the account; and
(c) debits to the account (other than those above) in the order in which each debit entry to the account was made.[73]

An exception to the above-mentioned limitations exist when: (1) the amount of the transaction exceeds $50.00 and (2) the transaction occurs in the same state as the cardholder's mailing address or within 100 miles of the cardholder's mailing address. In essence, those restrictions do not apply when the person honoring the credit card, e.g.,retailer:

(a) is the same person as the card issuer;
(b) is controlled by the card issuer;
(c) is under direct or indirect common control with the card issuer;
(d) is a franchised dealer in the card issuer's products or services;
(e) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer; or
(f) where the defense or claim can be classified as a "billing error" rather than as an assertion of a claim or defense.[74]

Where do consumers obtain credit reports and handle errors?

The standard credit report contains a vast amount of personal information, trade line (account) information, and public record data. The report also contains a listing of credit inquiries, individuals who have peered into the consumer's file, and "credit scoring"–the credit bureau's numerical assessment of the consumer as a credit risk. There are three major consumer reporting agencies (superbureaus) in America:

Experian/TRW
(800) 422-4879; (214) 390-3569
FAX (214) 390-1680
701 Experian Pkwy.
P.O. Box 949
Allen, Texas 75013-0949
contact: Carolyn Helm

Equifax Credit/CSC Credit
(800) 685-1111
(404) 612-2702
FAX (404) 612-3150
P.O. Box. 740193
Atlanta, Georgia 30374
contact: Bob Zecher, Esq.
or
(281) 878-1900
FAX (281) 878-4882
652 N. Sam Houston Parkway, Ste. 400
Houston, Texas 77267
contact: Ron Gore, Esq.

Trans Union Corporation
(800) 241-2858
(312) 408-1050
111 West Jackson
16th Floor
Chicago, Illinois 60604
contact: Denise Darcy, Esq.

Other credit bureaus are usually affiliated with one or more of the three major superbureaus. If a consumer obtains his or her report through an affiliated bureau, it is necessary for the consumer to know which superbureau provided the data found in the report and check with the other two superbureaus. These are three independent databases and each is likely to have different data. Curing errors on one of the databases does not effect results on the other two.[75]

To obtain a credit report, a consumer needs to write the major consumer reporting agencies and provide name, address, social security number, date of birth, spouse's name (if married), and his or her addresses from the past five years. Request a copy of all the information they maintain. If denial of credit occurred in the recent past, then the report is free. TRW is required to provide, upon proper request, one free report per year. Most states have passed laws governing the price of receiving a credit report under other circumstances.[76]

Upon receipt of the requested report(s), consumers should carefully read the instructions and analyze the entire report.

Upon receipt of the requested report(s), consumers should carefully read the instructions and analyze the entire report. Several types of problems are common: inquiries made without the consumer's approval; errors in personal information listed on the report; credit or collection accounts the consumer did not create; negative ratings on accounts not belonging to teh consumer; and/or public records information which is erroneous.

If any errors are discovered regarding: address, employment, or other personal information, a written demand for correction is strongly suggested. In each situation discussed, ask for a corrected copy of the report to be sent to recent authorized inquirers into the report.

Erroneous public record data or public record data improperly placed in a consumer's report can be the most damaging type. It is widely acknowledged that a bankruptcy, which can stay on a credit report for ten years from judgment, is the most negative mark which can be placed on a credit report.[77] If any erroneous public records data is contained in the (requested) report, the consumer needs to communicate directly with the consumer reporting agency.

The reports contain a listing of bureau subscribers which have been peering into credit report information. Inquiries can cause a creditor to deny credit. Potential creditors search for heavy inquiries or inquiries without corresponding trade lines and treat such inquiries as "red flags." Consumers should make a demand that the inquirers explain why they looked at the consumers' file. If the inquirers have no permissible purpose, the consumer should consider contacting the Federal Trade Commission, the United States Secret Service, and the consumer reporting agency, which allowed the access. Credit report confidentiality is critical, and bureau subscribers should use their terminal and report access in a responsible manner. A private civil action may also lie under the Fair Credit Reporting Act ("FCRA").[78]

If an error in the credit account or public records information is located, determine whether the listed account or information is something personally created or allowed to be opened in the consumer's name. If the trade line is vaild, a "billing dispute"may have occurred.[79] First, write the creditor and each major consumer reporting agency. Full identification is usually necessary in stating a dispute. A proper consumer dispute concerning a credit account is one that places the card issuer on notice as to the name of the consumer and the credit account number and includes a statement that the account or reporting is in error and a statement as to why the consumer believes the error exists, if possible.[80]

After receiving notice of dispute, the creditor must, within 30 days, send the requestor a written acknowledgment of the dispute and, in no later than 90 days after receipt of the notice, the creditor must either make the appropriate corrections in the report or send a written explanation, after conducting an investigation of the dispute, which sets forth the reasons why the creditor believes the present, disputed entry on the report is correct.[81] After the submission of a dispute letter to the creditor, the creditor "may not directly or indirectly threaten to report adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount (the disputed amount)."[82] A consumer must, nevertheless, pay any undisputed portion of the bill.

If the dispute persists, a civil action may be required to remove the error from the requsted report. Consumer reporting agencies must not only assure the "maximum possible accuracy" of data entered on the consumer's report, but must employ reasonable procedures to promptly investigate disputed matters.[83] Currently, consumer reporting agencies cater to their subscribers and very rarely delete disputed data unless the creditor-subscriber directly orders the deletion. This is one area where the industry refuses to comply with the FCRA. The FCRA provides limited immunity to creditors-subscribers for the reporting of false data.[84] Nonetheless, the reporting or failure to cause the deletion of inaccurate data previously reported by the creditor-subscriber can dispense with the immunity and provide a basis for reckless and willful conduct.

Also, immediately write the reporting agency, in a separate request, and demand that a "victim's statement" be added to the report.[85] The "victim's statement" is also referred to as the "statement of dispute."[86] Be sure that each consumer reporting agency lists the statement on the report and all subsequently issued reports. Each credit report issued by each consumer reporting agency must bear the victim's statement.

Tightening the screws on the customer

Courts have recognized that a credit issuer's "ability to report on the credit habits of its customers is a powerful tool designed, in part, to wrench compliance with payment terms from its cardholder."[87] Thus, a creditor's "refusal to correct mistaken information can only be seen as an attempt to tighten the screws on a non-paying customer."[88] Further, an erroneous or careless report serves no purpose but to substantially damage the consumer, and once it is published, the consumer cannot do much to remedy the damage it created.[89]

Concluding remarks

Credit cards, smart cards and other electronic transactions will apparently replace the cash medium in our near future. Consumers need to understand their rights regarding credit cards, fraud and credit reports. Moreover, consumers need to be ready to improve the laws when faced with changes in technology. Few Americans have ever seen their credit report(s); most do not realize the impact that credit reports have on their ability to utilize their valued property rights in their reputation and credit worthiness.

ENDNOTES

[1] United States v. Maze, 414 U.S. 395, 399 n.4 (1974).

[2] *See In re* Ford, 14 F.2d 848, 849 (W.D. Wash. 1926).

[3] Feder v. Fortunoff, Inc., 494 N.Y.S.2d 42 (N.Y. App. Div. 1985).

[4] *In re* Cloud, 107 B.R. 156, 159 (N.D. Ill. 1989); Williams v. United States, 192 F. Supp. 97, 99-100 (S.D. Cal. 1961).

[5] 15 U.S.C. § 1602(m) (1994).

[6] *See, e.g.*, First Nat'l Bank of Commerce v. Ordoyne, 528 So. 2d 1068, 1070 (La. Ct. App. 1988). "Application fraud" occurs in other areas too, including employment, insurance, tax, welfare, social security, and any other area where applications or benefits are provided.

[7] *See* First Nat'l Bank of Findlay v. Fulk, 566 N.E.2d 1270 (Ohio App. 1989); State Home Sav. Card Center v. Pinks, 540 N.E.2d 338 (Ohio Mun. 1988).

[8] State Home Sav. Card Ctr. v. Pinks, 540 N.E.2d 338, 340 (Ohio Mun. Ct. 1988) (finding defendant not liable as cardholder because he did not receive the card, the card did not have his name on it and he did not receive monthly billings on the card); *see* First Nat'l Bank of Findlay v. Fulk, 566 N.E.2d at 1273-74.

[9] *Cf.* Bank One, Columbus, N.A. v. Palmer, 579 N.E.2d 284, 286 (Ohio Ct. App. 1989) (finding that where there is a validly executed joint application or co-application, there may be joint liability on the account).

[10] Web, Inc. v. American Express Travel Related Servs. Co., Inc., 399 S.E.2d 513 (Ga. App. 1990), *rev'd on other grounds*, 405 S.E.2d 652 (Ga. 1990).

[11] *Id.* at 515.

[12] *Cf. State Home Sav. Card Ctr.*, 540 N.E.2d at 341.

[13] *See* TransAmerica Ins. Co. v. Standard Oil Co. Inc, 325 N.W.2d 210, 214 (N.D. 1982); *see* First Nat'l City Bank v. Mullarkey, 385 N.Y.S.2d 473, 474 (N.Y. Civ. Ct. 1976); Humble Oil & Ref. Co. v. Waters, 159 So. 2d 408, 410 (La. Ct. App. 1963).

[14] *See, e.g.*, Beard v. Goodyear Tire & Rubber Co., 587 A.2d 195, 200-01 (D.C. Cir. 1991).

[15] *See also* Humble Oil & Ref. Co. v. Waters, 159 So. 2d 408, 410 (La. Ct. App. 1963) (where a credit card company issues a credit card based on a telephone call, without some manner of checking the identity of the caller, the credit card company should bear the loss if fraud occurs); John C. Weistart, *Consumer Protection in the Credit Card Industry: Federal Legislative Controls*, 70 MICH. L. REV. 1475, 1509-10 (1972).

[16] 159 So. 2d 408, 410 (La. Ct. App. 1963).

[17] *See, e.g., TransAmerica Ins. Co.*, 325 N.W.2d at 214; *Beard*, 587 A.2d at 200.

[18] *See, e.g., Beard*, 587 A.2d at 202.

[19] Union Oil Co. v. Lull, 349 P.2d 243 (Or. 1960) (retailer has a duty of care to inquire about the identity of card user); Gulf Ref. Co. v. Willaims Roofing Co., 186 S.W.2d 790 (Ark. 1945) (merchant must examine charge card and only extend credit as card authozies); *see generally* American Airlines, Inc. v. Remis Industries, Inc. 494 F.2d 196, 201 (2d Cir. 1974); First Nat'l Bank of Mobile v. Roddenberry, 701 F.2d 927 (11th Cir. 1983); Humble Oil & Ref. Co. v. Waters, 159 So.2d 408 (La. App. 1963); Walker Bank & Trust Co. v. Jones, 672 P.2d 73, 76 (Utah 1983)(dissent); (aforementioned cases stating that the credit issuer is in a superior position to prevent and hault credit fraud; generally accepted rule unless evidence of authorized use and apparent authority); *see also* Weistart, *supra* note 15, at 1509–10.

[20] *Union Oil Co.*, 349 P.2d at 252, 254; *see also* Gulf Ref. Co. v. Williams Roofing Co., 186 S.W.2d 790, 794 (Ark. 1945) (it is "implied that the person extending the credit should read the card and extend credit only as authorized by it.").

[21] 15 U.S.C. §§ 1602(o), 1643 (1994).

[22] American Express Travel Related Servs. Co., Inc. v. Web, Inc., 405 S.E.2d 652 (Ga. 1991); *see Walker Bank & Trust Co.* at 75-76.

[23] 15 U.S.C. § 1643(b) (1988); Fifth Third Bank/Visa v. Gilbert, 478 N.E.2d 1324, 1326 (Ohio Mun. Ct. 1984); Cities Servs. Co. v. Pailet, 452 So. 2d 319, 321 (La. Ct. App. 1984); Michigan Nat'l Bank v. Olson, 723 P.2d 438, 441 (Wash. Ct. App. 1986).

[24] *See* Martin v. American Express, Inc., 361 So. 2d 597, 559 (Ala. Civ. App. 1978).

[25] *See generally* American Express v. Web, Inc., 405 S.E.2d 652; *Walker Bank & Trust Co.*, 672 P.2d 73.

[26] 15 U.S.C. § 1602(o) (1994); Michigan Nat'l Bank v. Olson, 723 P.2d 438, 442 (Wash. Ct. App. 1986); Standard Oil Co. v. Steele, 489 N.E.2d 842, 843 (Ohio Mun. Ct. 1985); *Walker Bank & Trust Co.*, 672 P.2d at 75.

[27] *See also* Society Nat'l Bank v. Kienzle, 463 N.E.2d 1261, 1265 (Ohio Ct. App. 1983) ("[a] husband is not answerable for the acts of his wife unless the wife acts as his agent or he subsequently ratifies her acts.").

[28] Standard Oil Co. v. Steele, 489 N.E.2d 842, 844 (Ohio Mun. Ct. 1985) (cardholder not liable for unauthorized use of the card after the credit issuer has been notified).

[29] *See* Tower World Airways, Inc. v. PHH Aviation Sys., Inc., 933 F.2d 174, 179 (2d Cir. 1991), *cert. denied*, 112 S. Ct. 87 (1991) (notice to issuer is ineffective); *American Express Travel Related Servs. Co., Inc.*, 405 S.E.2d at 655 (Ga. 1991) (notice does not convert misuse into unauthorized use); *Walker Bank & Trust Co.*, 672 P.2d at 76 (notice to issuer is ineffective); Martin v. American Express, Inc., 361 So.2d 597, 601 (Ala. Civ. App. 1978) (notice to issuer may not cut off future liability); Cities Servs. v. Pailet, 452 So. 2d 319, 321 (La. Ct. App. 1984) (notice cuts off liability); *Standard Oil Co.*, 489

N.E.2d at 844.

[30] 672 P.2d 73, (Utah 1983), *cert. denied by* Harlan v. First Interstate Bank of Utah, 466 U.S. 937 (1984).

[31] *Id.*

[32] *Id.* at 77-79 (Durham, J., dissenting); *see* Standard Oil Co. v. State Neon Co. Inc., 171 S.E.2d 777, 779 (Ga. Ct. App. 1969); *see also* Weistart, *supra* note 13, at 1509-10.

[33] Socony Mobile Oil Co. v. Greif, 197 N.Y.S. 2d. 522 (N.Y. App. Div. 1960); Standard Oil Co. v. State Neon Co., 171S.E.2d 777 (Ga. App. 1969).

[34] Oclander v. First Nat'l Bank of Louisville, 700 S.W.2d 804 (Ky. Ct. App. 1985).

[35] *Id.* at 806.

[36] *Id.*

[37] *Cf.* Sinclair Ref. Co. v. Consolidated Van & Storage Cos., 192 F. Supp. 87, 90 (N.D. Ga. 1960) ("[m]ere failure... of [the] plaintiff to promptly mail statements to [the] defendant did not work any estoppel against the plaintiff.").

[38] *See, e.g., Socony Mobil Oil Co.*, 197 N.Y.S.2d at 523-24.

[39] *Walker Bank & Trust Co.*, 672 P.2d at 75 (quoting Wynn v. McMahon Ford Co., 414 S.W.2d 330, 336 (Mo. Ct. App. 1967); *Tower World Airways, Inc.*, 933 F.2d at 177.

[40] *See* Vaughn v. United States Nat'l Bank of Or., 718 P.2d 769, 770-71 (Or. Ct. App. 1986).

[41] *Walker Bank & Trust Co.*, 672 P.2d at 75-76.

[42] Neiman-Marcus Co. v. Viser, 140 So. 2d 762, 765 (La. Ct. App. 1962).

[43] *See Walker Bank & Trust Co.*, 672 P.2d at 78 (Durham, J., dissenting).

[44] *Id.*

[45] 15 U.S.C. § 1643(a)(1) (1994); Fifth Third Bank/Visa v. Gilbert, 478 N.E.2d 1324, 1326 (Ohio Ct. App. 1984).

[46] *See* First Nat'l Bank of Commerce v. Ordoyne, 528 So. 2d 1068, 1069 (La. Ct. App. 1988). Sears, Roebuck & Co., one of America's largest retailers, maintains that "[n]ew application fraud continues to be the fastest growing area for fraud losses. The number of new application fraud incidents during 1991 was approximately 34% above 1990 figures and 20% of all fraud losses. New application fraud losses average $1,264 (per fraud account) compared to $856 for all other types of fraud losses. Fraud losses exceeded over $3.5 million dollars in 1991 (for this retailer alone). This figure does not take into consideration the expense associated with the follow up and investigation." (parenthetical explanations added).

[47] *But cf. Union Oil Co. of Cal.*, 349 P.2d at 249 ("both the card owner and the card issuer must show the exercise of care, the former in the custody of his card and the latter in making reasonable inquiry when it is used.").

[48] American Nat'l Bank of Beaumont v. Rathburn, 264 So. 2d 360, 363 (La. Ct. App. 1972).

[49] *Id.* at 361.

[50] *Id.* at 362.

[51] *See, e.g.*, Moore v. Credit Info. Corp. of Am., 673 F.2d 208, 210 (8th Cir. 1982).

[52] *Id.*

[53] 15 U.S.C. §§ 1666–1666j (1994).

[54] Gray v. American Express Co., 743 F.2d 10, 13 (D.C. Cir. 1984).

[55] Jacobs v. Marine Midland Bank, N.A., 475 N.Y.S.2d 1003, 1006 (N.Y. Sup. Ct. 1984); *see also* 15 U.S.C. § 1602(i) (1994):

> The term "open end credit plan" means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transaction and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan which is an open end credit plan within the meaning of the preceding sentence is an open end credit plan even if credit information is verified from time to time.

[56] 15 U.S.C. § 1666a (1994).

[57] *See id.* § 1666b.

[58] *Cf. id.* §§ 1666c–1666e.

[59] *Id.* §§ 1666-1666a, 1666(e).

[60] 12 C.F.R. § 226.12(c); 15 U.S.C. § 1666j (1994).

[61] 15 U.S.C. § 1640(a) (1994).

[62] *Id.* § 1640.

[63] *See, e.g.*, Payne v. Diner's Club Int'l, 696 F. Supp. 1153, 1156 (S.D. Ohio 1988).

[64] Saunders v. Ameritrust of Cincinnati, 587 F. Supp. 896, 898-99 (S.D. Ohio 1984); *see* 15 U.S.C. 1666(e) (1994).

[65] Pinner v. Schmidt, 805 F.2d 1258, 1264 (5th Cir. 1986).

[66] 15 U.S.C. § 1666(a) (1994).

[67] *Id.* § 1666(a)(1)–(a)(3).

[68] *Id.* § 1666i(a).

[69] *Id.*

[70] *Id.*

[71] *Id.*; *see, e.g.*, Plutchok v. European Am. Bank, 540 N.Y.S.2d 135, 137 (Dist. Ct., Nassau County 1989).

[72] 15 U.S.C. § 1666i(b) (1994).

[73] *Id.*

[74] *Id.* § 1666i(a).

[75] A 1989 study by Consolidated Information Services, a user of credit reports, found an error rate of forty-three (43%) percent in a random sample of 1,500 reports reviewed. A survey by Consumers Union found that forty-eight (48%) percent of the credit report sample contained inaccurate information. *What Are They Saying About Me? The Results of a Review of 161 Credit Reports from the Three Major Credit Bureaus*, CONSUMERS UNION, Apr. 29, 1991. *See generally*, William

Sheridan v. Equifax Credit Information Services, no. 95-274-CIV-ORL-22, U.S.D.C. (M.D. Fla., Orlando Division 1996) (deposition of Judith Chipley, Credit Investigation Supervisor of Datafax Credit Services, a mortgage report company; testimony that of the "Big 3" credit bureaus, in order to compile mortgage reposts, all three national credit bureaus experienced an error/inaccuracy rate of 50–90%. Further testimony that 90% of all consumer reports reinvestigated of people with common names or generation variations contained errors. Deposition Excerpt, R. Smith, "A Look Inside A Creedit Bureau's Operation," *Privacy Journal*, Vol. 22, No. 6, p.5 (April 1996).

[76] Call the agency, in advance, to ask about the price of a credit report (based upon the particular state of residence).

[77] *See* 15 U.S.C. § 1681c (1994).

[78] *See generally id.* §§ 1681–1681h.

[79] *See id.* § 1666(a)–1666(b).

[80] Gray v. American Express Co., 743 F.2d 10, 13 (D.C. Cir. 1984).

[81] 15 U.S.C. § 1666(a) (1994).

[82] *Id.* § 1666a.

[83] *See id.* §§ 1681e, 1681i.

[84] *See id.* § 1681h(e).

[85] *See id.* § 1681i(b)-1681i(c).

[86] I recommend that everyone have the following statement added, regardless of whether errors exist or fraud has occurred: "Do not extend credit or other benefits in my identity without first obtaining written and verbal confirmation from me at [permanent address and phone number(s)]." This statement operates as a warning to creditors that they need to verify the consumer's application with him or her prior to simply issuing credit or other benefit . . . possibly to a defrauder.

[87] Rivera v. Bank One, 145 F.R.D. 614, 623 (D.P.R. 1993)

[88] *Id.*

[89] Bartels v. Retail Credit Co., 175 N.W.2d 292, 296 (Neb. 1970).