

Consumer Law Remedies

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Seven Basic Types of Remedies

- ❖ Actual Damages
- ❖ Statutory Damages
- ❖ Punitive Damages
- ❖ Injunctive Relief
- ❖ Declaratory Relief
- ❖ Intangible Remedies
- ❖ Attorneys Fees and Costs

Comparison of Remedies

FDICPA 15 U.S.C. 1692	FCRA 15 U.S.C. 1681
Statutory Damages Actual Damages Attorneys Fees Costs	Statutory Damages Actual Damages Punitive Damages Attorneys Fees Costs

Actual Damages

- ❖ Money damages aimed at making client “whole”
- ❖ Types of compensable injuries:
 - ❖ Loss of Bargain
 - ❖ Out of Pocket
 - ❖ Cost to Repair
 - ❖ Physical / Emotional Injury
 - ❖ Lost Work Time / Lost Opportunity
 - ❖ Injury to Reputation / Relationship / Credit Standing
 - ❖ Consequential Damages

Consequential Damages

- ❖ Could be excluded by proper warranty language
- ❖ Costs and Attorneys Fees by Statute, Court Rule, or Common Law
- ❖ American Rule: Parties Pay Their Own Fees
- ❖ Remember the Pfalsgraf Rule of Proximate Cause

Statutory Damages

- ❖ Money Damages provided by statute
- ❖ Eliminates need to prove actual damages
- ❖ Generally, automatic if claim successful
- ❖ Statutes often leave amount to the discretion of the Court (e.g., \$100-\$1,000)
- ❖ Usually, not in the range of large amounts
- ❖ Typical: FDICPA up to \$1,000
- ❖ Exceptions: CROA, TCPA, ECOA, etc.

Punitive Damages

- ❖ Very dangerous for Defendants
- ❖ Open season for jury
- ❖ Aimed at deterring future acts of misconduct
- ❖ Punishment in the form of money judgment
- ❖ Drive settlement
- ❖ Not designed to compensate Plaintiff, but have that effect
- ❖ **Constitutional Test:** Punitive damages must bear a reasonable relationship to the harm likely to result to other potential victims and the potential future harm if conduct is not stopped.

Injunctive Relief

- ❖ Enjoining Defendant from committing further acts in violation of consumer statute
- ❖ Generally not-available unless provided for by statute
- ❖ Fairly rare
- ❖ Private Attorneys General Statutes Minn. Stat. § 8.31

Declaratory Relief

- ❖ Declaring contract void or unenforceable
- ❖ Declaring certain conduct illegal
- ❖ Generalized legal finding as to particular conduct
- ❖ Useful for Mass Actions or Class Actions

Intangible Remedies

- ❖ Apology
- ❖ Confrontation with Defendant
- ❖ Explanation of Conduct
- ❖ Promise of Remedial Measures
- ❖ Discipline of Employee
- ❖ Charitable Donation
- ❖ Cy Pres
- ❖ Publication of Misconduct
- ❖ Regulatory Action
- ❖ Termination of Employee
- ❖ Teddy Bear

Attorney's Fees

- ❖ Must be reasonable in relation to work performed
- ❖ Lodestar Method
- ❖ Court determines fees—not jury
- ❖ Done by separate motion and petition
- ❖ Nominal damages issue
- ❖ “A fight within a fight”

Costs

- ❖ Determined by federal statute
- ❖ Limited in scope
- ❖ Winner gets costs paid generally via FRCP
- ❖ Does not encompass attorneys fees
- ❖ Deposition costs are treated specially
- ❖ Travel costs usually not reimbursable

A Quote on Remedies

- ❖ “Ignorance of [Equal Credit Opportunity Act] requirements can be costly. Creditors who violate the ECOA may be held liable to aggrieved guarantors for actual damages suffered, punitive damages of \$10,000..., reasonable attorney’s fees, and any other relief the Court may deem appropriate (such as striking the underlying obligation which was guaranteed).... Since the time period for affirmative action claiming damages under the statute is relatively short, the number of these cases reported is minimal. Expect this trend to change as more and more attorneys become aware of the rich pot of potential damages (including ever-popular attorney’s fees) available at the end of the ECOA violation rainbow. Expect also the increased use of the internet as a vehicle for exchange of ideas among these attorneys [to] hasten the spread of this information.”
- ❖ From <http://www.poynerspruill.com/infocenter/Bankruptcy/ECOA.asp> (emphasis added).

Question and Answer
