to pursue an action against Farid Sayyed for a default on credit card debt. W&A sued Sayyed in Maryland state court to collect the balance due. W&A moved for summary judgment in the suit. Sayyed sued W&A in federal court alleging W&A violated the Fair Debt Collection Practices Act ("FDCPA"). The alleged violations stemmed from W&A's interrogatories to Sayyed and its summary judgment motion. W&A filed a motion to dismiss under Federal Rules of Civil Procedure 12(b)(6). W&A argued that attorneys enjoy absolute common law immunity from claims based on statements made in the course of judicial proceedings. Alternatively, even if W&A was not entitled to immunity, they argued that the interrogatories and summary judgment motion were served upon Sayyed's counsel rather than Sayyed himself, and thus could not give rise to violations of the FDCPA. Lastly, W&A argued that any allegedly false statements were based upon information furnished to W&A by Discover, and therefore, W&A had the right to rely upon that information. The district court concluded that W&A enjoyed absolute immunity from the FDCPA for its interrogatories and summary judgment motion, and thus dismissed the case.

HOLDING: Reversed and remanded.

REASONING: The court stated that no absolute common law immunity attaches to law firms that constitute debt collectors because the FDCPA clearly defined the parties and activities it regulated. The court looked at section 1692a(6) of the FDCPA and noted that the plain meaning of the Act's definition of "debt collector" encompasses attorneys. Further, the court found that the FDCPA states six specific exceptions to the definition of "debt collector," none of which W&A met. Therefore, according to the plain text of the statute, W&A was a debt collector subject to the provisions of the FDCPA.

In *Heintz v. Jenkins*, 514 U.S. 291, 293 (1995), the Supreme Court expressly confirmed this reading of the FDCPA. The Supreme Court recognized that an earlier version of section 1692a(6) had provided an express exception for lawyers, but that this exemption was repealed by Congress in 1986. Thus the Supreme Court confirmed that there is no implied exemption to the statute's definition of debt collector. As is clear from its face, the FDCPA "applies to the litigating activities of lawyers."

The court found that Congress expressly addressed the issue of immunity and extended it only as far as provided by section 1692k(c): bona fide errors and non-intentional violations. Under the plain meaning of the FDCPA, a litigating attorney fell under the statute's definition of "debt collector." Therefore, the court recognized that even if conducting litigation, lawyers may be engaged in the collection of debts.

In *Heintz*, the Supreme Court held that there was a cause of action under the FDCPA on the basis of statements contained within a letter to counsel. Therefore in the current case, the court reasoned that FDCPA liability could attach to communications made by a debt collection attorney to a debtor's counsel, because the statute defines "communication" broadly as "the conveying of information regarding a debt directly or indirectly to any person through any medium." 15 U.S.C. §1692a(2).

CONSUMER CREDIT

CREDIT REPORT ERROR WAS NOT UNREASONABLE

Dennis v. BEH-1, LLC, 485 F.3d 443 (9th Cir. 2007).

FACTS: Jason Dennis was served with an unlawful detainer complaint by his landlord, BEH-1, LLC. BEH-1 agreed to drop the suit in exchange for $1,959 to be paid in installments. Dennis and BEH-1 agreed that no judgment would be entered. Despite their agreement, the court's register reflected that a judgment was, in fact, entered.

Dennis received a credit report from Experian Information Solutions, Inc. which indicated that a civil claim judgment had been entered against him. Dennis called Experian to inform them of the error. Experian in turn contacted Hogan Information Services, a third-party public records vendor to verify the disputed information. Hogan informed Experian that the information was accurate. Experian informed Dennis that it would not amend the report.

Dennis sued Experian alleging violations of the California Consumer Credit Reporting Agencies Act. The district court granted summary judgment to defendants on all claims. Dennis appealed, challenging the summary judgment ruling arising from Experian's duty to maintain "reasonable procedures" to ensure the accuracy of credit reports under section 1681(b).

HOLDING: Affirmed.

REASONING: To maintain a claim under section 1681(b), a plaintiff must show that the credit reporting agency failed to maintain "reasonable procedures" to insure the accuracy of its reports. Once a plaintiff establishes that his credit report is inaccurate, "[t]he reasonableness of the procedures and whether the agency followed them will be jury questions in the overwhelming majority of cases." *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995). Credit agencies are obligated to follow "reasonable procedures" to ensure that reports accurately reflect creditworthiness. The only alleged defect in Experian's initial investigation was that it relied on secondary documents without obtaining a copy of the actual judgment. The documents were official records issued by the Superior Court. Thus, it was reasonable, as a matter of law, for Experian to base its initial report on the secondary documents without doing any additional investigation.

SUPREME COURT SETBACK NO BAR TO ATTORNEY FEES UNDER TILA

Nigh v. Koons Buick Pontiac GMC, Inc., 478 F.3d 183 (4th Cir. 2007).

FACTS: Nigh filed suit against Koons alleging conversion, breach of contract, fraud, and violations of the Federal Odometer Act, Truth In Lending Act ("TILA"), and Virginia Consumer Protection Act ("VCPA"). A jury returned a verdict for Nigh under TILA and VCPA. Koons appealed its liability and the amount in damages, costs, and attorneys' fees awarded to Nigh. The Fourth Circuit affirmed the district court's judgment in all respects and awarded an additional $11,840 in attorneys' fees

for the work done on appeal. Koons appealed to the Supreme Court, which only reviewed the damage amounts awarded under TILA. The Court agreed with Koons that TILA capped Nigh's damages at $1,000. The case was remanded to the Fourth Circuit, which vacated all past awards for attorneys' fees, and the Fourth Circuit remanded to the district court to determine the fees. On remand, the district court reinstated the attorneys' fees awarded for work done up to and including the initial appeal to the Fourth Circuit. The district court also awarded $33,644 for the work done in relation to the Supreme Court appeal, $4,564.50 for the remand to the Fourth Circuit, and $5,906 for the remand to the district court. In addition, the district court awarded $3,590 in costs for a total of $85,083.60. Koons brought this appeal to contend that Nigh does not deserve costs or attorneys' fees for the work done with the Supreme Court appeal and subsequent proceedings.

HOLDING: Affirmed in part, vacated and remanded in part.

REASONING: The Fourth Circuit determined that TILA required a defendant to pay costs and reasonable attorneys' fees to anyone who brought a successful action against a defendant. The court defined an action as a lawsuit. An action begins with the filing of a complaint and ends when a party may no longer obtain review of the final disposition of the case, encompassing all steps necessary in between. Therefore, even if the plaintiff may lose at a certain stage of the lawsuit, if the plaintiff's action is eventually successful in the final disposition, the plaintiff may recover fees for work done at any stage of the lawsuit. The Fourth Circuit found that Nigh's action was successful in relation to TILA. The Supreme Court agreed with Koons only on the issue of the $1,000 cap under a TILA suit. There was no reversal in the determination of the lower courts that Koons was liable to Nigh under TILA. Therefore, Nigh was owed costs and reasonable attorneys' fees. The court found that costs were simple to calculate because the district court had assessed them. The main issue was determining reasonable fees. The Fourth Circuit reinstated the $11,840 for attorneys' fees amassed during the initial Fourth Circuit appeal. The Fourth Circuit remanded the attorneys' fees for the initial trial proceedings in the district court to recalculate the percentage.

Even if the plaintiff may lose at a certain stage of the lawsuit, if the plaintiff's action is eventually successful in the final disposition, the plaintiff may recover fees for work done at any stage of the lawsuit.

Koons believed that it was unreasonable to award Nigh such high fees when Nigh lost an argument before the Supreme Court. The Fourth Circuit reasoned that when Koons chose to appeal their initial ruling, it accepted responsibility for the reasonable attorneys' fees Nigh would incur defending his judgment before the Supreme Court and in subsequent proceedings. The Fourth Circuit has upheld fee awards in similar circumstances in *Plyler v. Evatt*, 902 F.2d 273 (4th Cir. 1990), and in *Perry v. Bartlett*, 231 F.3d 155 (4th Cir. 2000). The court determined that as long as the fees were reasonable, the award was proper.

FAIR CREDIT REPORTING ACT VIOLATION IS WILLFUL IF IT RESULTED FROM RECKLESS DISREGARD OF A CONSUMER'S RIGHTS UNDER THE ACT

Safeco Ins. Co. of Am., v. Burr, 127 S.Ct. 2201 (2007).

FACTS: The Fair Credit Reporting Act ("FCRA") requires notice to any consumer subjected to "adverse action . . . based in whole or in part on any information contained in a consumer [credit] report." 15 U.S.C. §1681m(a). The notice must point out the adverse action, explain how to reach the agency that reported on the consumer's credit, and tell the consumer that he can get a free copy of the report and dispute its accuracy with the agency. Anyone who "willfully fails" to provide notice is civilly liable to the consumer. §1681n(a). As it applies to an insurance company, "adverse action" is "a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for." §1681a(k)(1)(B)(i).

GEICO writes auto insurance through four subsidiaries: GEICO General, which sells "preferred" policies to low-risk customers; Government Employees, which sells "preferred" policies only to government employees; GEICO Indemnity, which sells standard policies to moderate-risk customers; and GEICO Casualty, which sells nonstandard policies to high-risk customers. Potential customers call a toll-free number answered by an agent of the four affiliates, who take information and, with permission, get the applicant's credit score. Under its contract with its credit information providers, GEICO learns credit scores and facts in the credit reports that significantly influence the scores, but does not have access to the credit reports themselves. This information goes into GEICO's computer system, which selects the appropriate company and the particular rate at which a policy may be issued.

For some time after FCRA went into effect, GEICO sent adverse action notices to all applicants who were not offered "preferred" policies from GEICO General or Government Employees. GEICO changed its practice, however, after a method to "neutralize" an applicant's credit score was devised. Under this new method, the applicant's company and tier placement is compared with the company and tier placement he would have been assigned with a "neutral" credit score, that is, one calculated without reliance on credit history. Under this new scheme, GEICO only sends adverse action notice if using a neutral credit score would have put the applicant in a lower priced tier or company. The applicant is not otherwise told if he would have gotten better terms with a better credit score.

Ajene Edo applied for auto insurance with GEICO. After obtaining Edo's credit score, GEICO offered him a standard policy with GEICO Indemnity (at rates higher than the most favorable), which he accepted. Because Edo's company and tier placement would have been the same with a neutral score, GEICO did not send Edo an adverse action notice. Edo later filed a proposed class action against GEICO, alleging willful failure to give notice in violation of §1681m(a). The district court granted summary judgment for GEICO, finding there was no adverse action when "the premium charged to [Edo] . . . would have been the same even if GEICO Indemnity did not consider information in [his]

consumer credit history."

Like GEICO, Safeco relies on credit reports to set initial insurance premiums, as it did for Charles Burr and Shannon Massey, who were offered higher rates than average. Safeco did not send them adverse action notices, and they later joined a proposed class action against the company, alleging willful violation of §1681m(a) and seeking statutory and punitive damages under §1681n(a). The district court ordered summary judgment for Safeco, on the understanding that offering a single, initial rate for insurance cannot be "adverse action."

The Court of Appeals for the Ninth Circuit reversed both judgments. In GEICO's case, it held that whenever a consumer "would have received a lower rate for his insurance had the information in his consumer report been more favorable, an adverse action has been taken against him." The Ninth Circuit also held that an insurer "willfully" fails to comply with FCRA if it acts with "reckless disregard" of a consumer's rights under the FCRA. It explained that a company would not be acting recklessly if it "diligently and in good faith attempted to fulfill its statutory obligations" and came to a "tenable, albeit erroneous, interpretation of the statute." The court went on to say that "a deliberate failure to determine the extent of its obligations" would not ordinarily escape liability under §1681n, any more than "reliance on creative lawyering that provides indefensible answers." In the action against Safeco, the Ninth Circuit rejected the district court's position relying on its reasoning in the GEICO case.

The Supreme Court consolidated the two matters and granted certiorari to resolve a conflict in the circuits as to whether §1681n(a) reaches reckless disregard of FCRA's obligations, and to clarify the notice requirement in §1681m(a). The government filed an amicus brief.

HOLDING: Reversed and remanded.

REASONING: The Court disagreed with GEICO and Safeco's interpretation that liability under §1681n(a) for "willfully failing to comply" with FCRA goes only to actions known to violate the FCRA, not to reckless disregard of statutory duty. The Court stated where willfulness is a statutory condition of civil liability, the Court had generally taken it to cover not only knowing violations of a standard, but reckless ones as well. The construction reflected common law usage, which treated actions in "reckless disregard" of the law as "willful" violations. The standard civil usage thus counsels reading the phrase "willfully fails to comply" in § 1681n(a) as reaching reckless FCRA violations. this was so both on the interpretive assumption that Congress knew how the Court construed statutes and expected the Court to run true to form, and under the general rule that a common law term in a statute comes with a common law meaning, absent anything pointing another way.

Both GEICO and Safeco's claims were premised on initial rates charged for new insurance policies, which are not "adverse" actions unless quoting or charging a first-time premium is "an increase in any charge for . . . any insurance, existing or applied for." The Court looked to the FCRA's statement of purpose, which uses expansive terms to describe the adverse effects of unfair and inaccurate credit reporting and the responsibilities of consumer reporting agencies. The descriptions of systemic problems and need as Congress saw them did nothing to suggest that remedies for consumers placed at a disadvantage by unsound credit ratings should be denied to first-time victims, and the legislative histories of FCRA's original enactment and of the 1996 amendment revealed no reason to confine attention to customers and businesses with prior dealings. There was nothing about insurance contracts to suggest that Congress might have meant to differentiate applicants from existing customers when it set the notice requirement. The Court held that the "increase" required for "adverse action" speaks to a disadvantageous rate even with no prior dealing; the term reached initial rates for new applicants.

After determining that the initial rate for new insurance can be an "adverse action," the next hurdle to clear was that the FCRA calls for notice only when the adverse action is "based in whole or in part on" a credit report. In common talk, the phrase "based on" indicates a but-for causal relationship and thus a necessary logical condition. Under the natural reading of § 1681m(a), an increased rate is not "based in whole or in part on" the credit report unless the report is a necessary condition of the increase. Because the statute does not explicitly call for notice when a business acts adversely merely after consulting a report, conditioning the requirement on action "based . . . on" a report suggests that the duty to report arises from some practical consequence of reading the report, not merely some subsequent adverse occurrence that would have happened anyway. If the credit report has no identifiable effect on the rate, the consumer has no immediately practical reason to worry about it; both the company and the consumer are where they would have been if the company had never seen the report. And if examining reports that make no difference is supposed to trigger a reporting requirement, it would be hard to find any practical point in imposing the "based . . . on" restriction. So it makes more sense to suspect that Congress meant to require notice and prompt a challenge by the consumer only when the consumer would gain something if the challenge succeeded.

If the credit report has no identifiable effect on the rate, the consumer has no immediately practical reason to worry about it.

The remaining step in determining a duty to notify is identifying the benchmark for determining whether a first-time rate was a disadvantageous increase. And in dealing with this issue, the pragmatic reading of "based . . . on" as a condition necessary to make a practical difference carries a helpful suggestion. The Court found GEICO and Safeco's "increase" baseline, as opposed to the government's preferred baseline of the best rate, was more comfortable with the understanding of causation, which requires notice under §1681m(a) only when the effect of the credit report on the initial rate offered is necessary to put the consumer in a worse position than other relevant facts would have decreed anyway. If Congress was this concerned with practical consequences when it adopted a "based . . . on" causation standard, it presumably thought in equally practical terms when it spoke of an "increase" that must be defined by a baseline. Congress was therefore more likely concerned with the practical question whether the consumer's rate actually suffered when the company took his credit report into account than the theoretical question whether the consumer would have gotten a better rate with perfect credit. A loophole would have existed, keeping first-time applicants who actually deserved better-than-neutral credit scores from getting notice, even when errors in

credit reports saddle them with unfair rates. The neutral-score baseline will leave some consumers without a notice that might lead to discovering errors. The Court saw a more demonstrable and serious disadvantage inhering in the government's position.

Because the best rates presumably go only to a minority of consumers, adopting the government's view would have required insurers to send slews of adverse action notices. The Court felt the consequence of sending out notices on this scale would undercut the obvious policy behind the notice requirement, for notices as common as these would take on the character of formalities, and formalities tend to be ignored. People would discuss that new insurance usually comes with an adverse action notice, owing to some legal quirk, and instead of piquing an applicant's interest about the accuracy of his credit record, the commonplace notices would mean almost nothing and go the way of junk mail. Furthermore, the Court held Congress intended the same baseline to apply if the quoted rate remained the same over a course of dealing, being repeated at each renewal date. Once a consumer learns that his credit report led the insurer to charge more, he does not need to be told again if his rate has not changed. Thus, after initial dealing between the consumer and the insurer, the baseline for "increase" is the previous rate or charge, not the "neutral" baseline that applies at the start.

In GEICO's case, the initial rate offered to Edo was the one he would have received if his credit score had not been taken into account, and GEICO owed him no adverse action notice. Safeco's reading of the statute, albeit erroneous, was not objectively unreasonable. A company subject to FCRA does not act in reckless disregard unless the action is not only a violation under a reasonable reading of the statute's terms, but shows that the company ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless. On the rationale that "increase" presupposes prior dealing, Safeco took the definition as excluding initial rate offers for new insurance, and so sent no adverse action notices to Burr and Massey. While the Court disagreed with Safeco's analysis, it recognized that its reading has a foundation in the statutory text. This was not a case in which the business subject to the FCRA had the benefit of guidance from the courts of appeals or the Federal Trade Commission that might have warned it away from the view it took. Before these cases, no court of appeals had spoken on the issue, and no authoritative guidance had yet come from the FTC. Given this dearth of guidance and the less-than-lucid statutory text, Safeco's reading was not objectively unreasonable, and so falls well short of raising the "unjustifiably high risk" of violating the statute necessary for reckless liability.

ATM CARD MAY BE A "CREDIT CARD" FOR PURPOSE OF TRUTH IN LENDING

In re Washington Mutual, 201 Fed. Appx. 409 (9th Cir. 2006).

FACTS: In 2001, Washington Mutual issued a series of promotional materials for an overdraft protection feature for its new and existing deposit accounts. Plaintiffs claim that in these promotional materials Washington Mutual agreed to automatically "cover" all overdrawn items, including checks, debit card purchases, and ATM withdrawals, within the limit of the customer's account. The materials included the following statements: "Don't Worry, we'll cover you" and "Automatic Protection." Plaintiffs further allege that despite the claims that all overdrawn items would be paid, Washington Mutual issued statements stating: "The fee for each overdrawn item, whether paid or returned, is $21.00."

On October 20, 2003, plaintiffs filed a Consolidated Class Action Complaint ("Complaint") against Washington Mutual. The Complaint alleged a number of violations, including a violation of the Truth in Lending Act ("TILA"). The Complaint claimed that Washington Mutual violated TILA by issuing unsolicited ATM and debit cards and failing to disclose the annual percentage rate in periodic statements. Washington Mutual argued that ATM and debit cards were not considered credit cards for the purpose of TILA and moved to dismiss plaintiffs' Complaint for failure to state a claim. The district court agreed that ATM and debit cards were not subject to TILA's Regulation Z concerning credit cards and granted the motion to dismiss the claim. Plaintiffs appealed the district court's dismissal of their claims.

The district court did not properly interpret the TILA definition of credit card and its express exclusions.

HOLDING: Affirmed.

REASONING: The court of appeals concluded that the district court did not properly interpret the TILA definition of credit card and its express exclusions. The court stated that "[a] check-guarantee or debit card with *no credit* feature or *agreement*" is excluded from the TILA definition of credit card. The court determined that the ATM and debit cards issued by Washington Mutual could possibly fall under the definition of credit card because the plaintiffs' complaint "did not necessarily imply the existence of a formal, written deposit agreement." Rather, the Complaint alleged that a credit agreement governing the ATM cards existed based on promotional materials and the parties' conduct, and thus the cards may fall within the definition of credit cards. The court remanded this issue for further proceedings stating that "if the plaintiffs cannot prove the facts alleged, or if the defendants introduce evidence of a written deposit agreement with terms contrary to the promotional materials, the cards may well *not* satisfy the definition of credit cards."

PUNITIVE DAMAGES BASED ON BOUNCED CHECKS REVERSED

Telecheck Services, Inc., v. Elkins, 226 S.W.3d 731 (Tex. App.—Dallas 2007).

FACTS: Telecheck Services, Inc. advises merchants on whether to accept bank checks as a form of payment from customers based on information maintained in its database as to the check writing history of the check writer. In May 1999, Rodney Elkins wrote a check to an Albertson's grocery store that Telecheck rejected. The store manager accepted the check anyway and gave Elkins contact information for Telecheck. After refusing to disclose information he considered intrusive and unnecessary, the customer service representative informed Elkins that she could not assist him. Elkins wrote a letter to Telecheck requesting all

information Telecheck had on his accounts. Telecheck did not respond to the letter.

In December 1999, four other merchants declined Elkins's checks based on Telecheck's information. Each time Elkins wrote to Telecheck. Elkins did not receive a response. Finally, in November 2000, after being declined again, Elkins sent another letter to Telecheck by certified mail. Elkins demanded that Telecheck correct the information on his accounts and also provide him with all information they had regarding his check writing history. Telecheck informed Elkins that his driver's license was associated with another file in its database and that Telecheck had corrected the association. However, Telecheck did not respond to Elkins's request for information on his file. After receiving Telecheck's letter, Elkins attempted to write another check and was declined, prompting Elkins to file suit. After filing suit, another one of Elkins's checks was declined based on Telecheck's information. A jury found in Elkins's favor for negligence, defamation, and Federal Fair Credit Reporting Act claims. The jury awarded $5,500 in actual damages and $50,000 in exemplary damages, and attorney's fees. Telecheck appealed.

HOLDING: Reversed and remanded.

REASONING: In order to receive exemplary damages, Elkins had to prove by clear and convincing evidence that the harm to him was caused by malice on Telecheck's part. At the time the suit was filed, malice included an alternative gross negligence component. This gross negligence component further contained a subjective and objective component. There was evidence as to the subjective prong as Telecheck admitted during trial it makes mistakes and has oversight in its process of collecting and storing information. However, the objective prong requires an "extreme degree of risk." Extreme degree of risk requires a likelihood of serious injury. Based on the evidence, the court could not conclude that Telecheck's conduct involved extreme risk. Thus, the award of exemplary damages was reversed.

Extreme degree of risk requires a likelihood of serious injury. Based on the evidence, the court could not conclude that Telecheck's conduct involved extreme risk.

THE TERM "FILE" IN THE FAIR CREDIT REPORTING ACT INCLUDES EVERYTHING CONTAINED IN CONSUMER'S REPORT

Gillespie v. Equifax Info. Servs., L.L.C., 484 F.3d 938 (7th Cir. 2007).

FACTS: Heather Gillespie and Angela Cinson each defaulted on credit accounts that were subsequently sold to a collection agency. These delinquent accounts were reported to credit reporting agencies including Equifax Information Services, L.L.C. Gillespie and Cinson requested their consumer credit files from Equifax. The files contain a field entitled "Date of Last Activity", which lists the date of the consumer's last activity on an account. The "Date of Last Activity" field is clarified by a disclosure statement that is supposed to explain how long a closed or delinquent account will remain on the consumer's report. The plaintiffs argued that the disclosure statement was not clear and accurate as required by 15 U.S.C. §1681g(a)(1) of the Fair Credit Reporting Act ("FCRA") because it did not allow a consumer to determine if Equifax was properly calculating the seven and one-half year time period that delinquent accounts were allowed to remain on a credit report. The district court granted Equifax's motion for summary judgment. The plaintiffs appealed.

HOLDING: Reversed and remanded.

REASONING: Section §1681g(a)(1) of FCRA states that "every consumer reporting agency shall, upon request . . . clearly and accurately disclose to the consumer [a]ll information in the consumer's file at the time of the request." The court reiterated its holding from *Gillespie v. Trans Union Corp.*, 482 F.3d 907 (7th Cir. 2007), that the term "file" is limited to the information provided in a consumer report as opposed to all the data a consumer reporting agency may be retaining on a consumer. In *Gillespie v. Trans Union*, the plaintiffs argued that their files did not contain the date when a delinquent account would be purged from their records. The court found that because Trans Union did not include the purge date in consumer reports, it did not have to be given to a consumer in a file request.

In the present case, the court found that the information provided by Equifax, in the "Date of Last Activity" field, was not clear as required by 15 U.S.C. §1681g(a)(1). First, the field might contain multiple dates, which can cause confusion and uncertainty for a consumer. Second, Equifax did not explain whether the dates reflect positive or negative history. Finally, in the files provided to the plaintiffs, Equifax chose to leave the field entitled "Date Maj. Dlqu. Rptd." blank, which is supposed to show the date that the first major delinquency was reported on an account.