How To Identify And Intake The Credit Damage Client (With Forms)

Georg Finder

Damage to credit is not a theory of liability — it is a type of injury.

MANY OF TODAY'S compensation laws were in place long before credit reports became such a key personal profile of an individual. Whereas in the past a person would have a personal word-of-mouth reputation among friends, now a credit report is the person's financial reputation in print — a reputation that must be protected to prevent serious financial consequences and loss to quality of life. Credit damage is a special damage evinced by reduced credit capacity, increased out-of-pocket expenses, or loss of credit expectancy because of third-party actions that cause negative information to appear on a client's credit report. When personal injuries or other wrongful acts force people to default on their credit obligations, they suffer financial harm. Injury to one's financial reputation is real, not speculative, and it can be objectively measured to add substantial monetary damages to settlements and jury awards.

Since 1970 the most frequent credit damage complaint targets have been the three national credit bureaus, Transunion, Experian, and Equifax. The second most frequent group of defendants regarding credit damage have been collection agencies. Lenders who misreported payments were a major target.

Since 1995, there has been growing recognition that credit damage may be sought in more than 14 distinct



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causes of action. Defendants in these matters have been individuals, businesses of all sizes, and their insurance companies. Whatever the cause of action — fraud, breach of contract, breach of fiduciary duty, negligence, personal injury, credit report errors by the lender, wrongful termination, and more — each of these cases should include review of the impact on the credit reputation and creditworthiness of the damaged party to recover the full amount of compensatory damages. Not doing so may cause uncompensated measurable damage, thus leaving money on the table.

THE CREDIT REPORT: FINANCIAL REPUTATION IN PRINT • The credit score represents a computerized indication of creditworthiness, i.e., the perceived likelihood that the person will pay his or her debts fully and on time. The impact of a bad credit rating is much more significant than most people think, as just about every major purchase hinges on one little three-digit score, compiled from numerous sources. Consider what an individual with a poor financial reputation faces when he or she wants to lease or buy a vehicle, obtain credit cards, or refinance a home. Because a person with bad credit is viewed with suspicion, the lender feels the need to protect against a greater risk or default and charges significantly more for future extension of credit.

Many people are victims of credit damage through no fault of their own. Wrongful termination, personal injury, identity theft, breach of contract, divorce, and creditor misreporting are just a few of the ways credit can be damaged. These individuals helplessly watched as a credit reputation they worked years to build was destroyed in a matter of days. As a result, their quality of life diminishes because consumer reporting companies sell the information contained in the report to businesses that use it when evaluating applications for home loans and rental housing, credit cards, car loans or leases, insurance, and employment.

IDENTIFY AND INTAKING COMPENSABLE CREDIT DAMAGE VICTIMS • Do your clients complain about expensive and derogatory changes in their credit? Maybe they express concern about loss of credit cards? Have they found their credit ratings declining as a result of the wrongdoing that is the subject of their litigation? All of these are signs that should alert you to a way to make their damage demand more comprehensive. Just a few simple steps will identify clients who have enough credit damage to be compensated for it. Compensation for credit damage is authorized by California Civil Code Section 3333, "[f]or the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not." Two basic steps can determine credit damage victims who can be compensated, per California Civil Code Section 3300. Identification of these individuals is appropriate at case intake, even if the damage is not yet evident.

1. Separate Out Those Who Will Not Qualify For Credit Damages

Find out how the credit was damaged post-injury. If the damage was self-inflicted pre-injury, the probability is that damage compensation will be reduced. Find out about the victim's credit experience. Insufficient credit experience will significantly alter the probability of damage compensation. Note that pre-injury credit does not have to be perfect, but enough credit must be in use at the time of the injury to make a pre-injury to post-injury comparison of credit use and a determination of damages.

2. Learn The Client's Credit Background

Find out the following information to determine the client's credit experience:

- Does the client have and use credit cards?

__ How many and what is the aggregate credit limit?
__ The aggregate limit must be at least $10,000.

- Does the client have a car loan?

__ If so, what was the loan amount?
__ The loan must be $10,000 or more.

- Does the client have a mortgage?

__ If so, what is the amount?
__ In what year did he obtain the mortgage?

- Check with the client about any other types of loans or business guarantees and whether the client is a co-signer on any loans.

3. Find Out The Status Of The Credit Report *At Intake*

Depending on the time of the month, derogatory remarks could be appearing immediately in the client's credit report. If the injury happened about the time statements are usually mailed, and the client cannot make timely payments, the damage is already happening. Typically, statements are sent out the last few days of the month through the 15th, so the late payment remark damage could appear in the next credit reporting cycle. This derogatory remark will continue to impact the credit reputation of the client for up to seven years, per the Fair Credit Reporting Act.

The longer the period of derogatory remarks the greater the reputation damage. As the damage period extends, and the late payments increase, the weight of the type of derogatory remark increases. Continuance of late payments could cause account closure, which often leads to the appearance of collection accounts, judgments, or liens.

Once you determine that there is sufficient pre-injury credit use and experience and that the client has a relatively good credit record prior to the event giving rise to the cause of action, you will have identified a person who can be compensated for credit damage. Remember, pre-injury credit does *not* have to be perfect to be compensable.

Once you have identified that the client can be compensated, you should take the following steps to determine the extent of the damage.

4. Collect The Evidence

If the client is a likely candidate for credit damage compensation, advise the client to collect and save monthly statements and any financial notices, including Notice of Denial, Notice of Cancellation, Notices of Rate Adjustment, etc. Having these documents collected in advance will be more efficient than going through the "archives" later.

5. Find Out About Income

If the client has missed at least four paychecks resulting in late or missed payments causing any account closure or charge off, referral to a bill collector, bankruptcy, foreclosure, repossession, or any other adverse event, the probability for damage compensation is very strong.

6. Get A New Credit Report — The Subscriber Report

If possible, have the client immediately get a copy of a subscriber credit report — typically the most complete information is obtained from a mortgage lender. Have the client ask for a pre-qualifier service from the lender.

The credit report a consumer can buy on the Internet or get for free or for a few dollars directly from any of the credit bureaus is not a qualified report. It is technically a "consumer disclosure report." The consumer disclosure report is never reviewed by lenders as part of the loan application processing procedure. The consumer disclosure report is written in plain language, not codes, so the information is easier to understand. However, several studies have shown that the content difference between a consumer disclosure report and a subscriber credit report can be up to 44 percent

— that means that almost half of the information found in a subscriber credit report is missing from a consumer disclosure report. As a result, damaging account information may not even appear in the consumer disclosure report.

Each credit bureau has a unique list of subscribers, and not all information is the same in each credit report. That's why it is important to get a tri-merged subscriber credit report, to be sure you have obtained complete information.

7. Monitor The Damage

New timely information is added to credit files about every 30 to 45 days. Before submitting an incomplete damage demand, review the status of the client's credit damage so you don't leave thousands of dollars unclaimed. Review the credit report for the appearance of additional derogatory remarks since the injury.

8. Communicate With The Client

Be completely informed on a timely basis regarding major damage actions that may only appear in the credit report many weeks after their occurrence. Such actions include vehicle repossession, unlawful detainer notices where the rent is large enough to be a significant credit factor, notices of foreclosure, liens, judgments, etc. Encourage the client to notify you immediately as any of these occur.

As the additional credit damages are inflicted, have the client keep a diary of the stressful or embarrassing experiences — denial of a credit card charge at the grocery store, or while out with friends or family at a restaurant or other event. Loss of credit card capacity may cause denial of an important trip or other lifestyle erosion causing compensable emotional distress.

MEASURING LOSS OF CREDITWORTHINESS • Much like awards for pain and suffering not too long ago, both judges and juries once refused to acknowledge credit damage, claiming it was speculative because of the difficulty of measuring the damage. Since 1995, however, when reliable credit damage measurement (CDM) reports became available, victims of credit damage have been compensated for the damage to their financial reputation.

The credit reporting industry is a multimillion dollar business that went unregulated from 1899 until 1970 and continues to operate in relative secrecy. Because of this, and because defense lawyers argued that credit damage is speculative, credit damage rarely appeared as a part of a damage demand or cause of action. However, as more courts determined ways to award monetary damages for other hard-to-calculate injuries, such as emotional distress, humiliation, and loss of consortium, recovery for injury to financial reputation became more acceptable.

A CDM report measures the actual out-of-pocket dollars reasonably expected from loss of creditworthiness, including higher down payments, higher interest rates, and higher points and costs on loans over a seven-year period.

One of the key points of CDM is to detail how it affects a client. For example, a client's credit may be near-perfect before the negative information appears on the client's credit report. By analyzing the pre-injury credit compared to post-injury credit, the CDM measures the cost of the same loans with the two different credit statuses.

In an early use of an expert witness for credit damage, *Bauer v. ERA Realty,* a 1995 arbitration in Ontario, California, the client recovered $33,000 for damaged credit reputation (as opposed to a $6500 offer by the insurance carrier) by showing the differing cost between refinancing a $140,000 loan with her previous healthy rating and what the damaged credit rating would add to the cost of the loan over a seven-year period.

The Expert's Role

Although major financial institutions rely on the accuracy of credit reports, courts are not always willing to admit them as evidence because what is contained in the report is hearsay. Proof at trial is susceptible to challenges of authenticity, lack of personal knowledge, and various procedural maneuvers and motion play. With an expert witness, a lawyer can get a credit report in front of the jury, however, because it is used as a basis for the expert's opinion. To press the client's tangible credit damage into the minds of the jurors, sections of the credit report can be blown up and used as demonstrative exhibits to reveal the chronology of events, show the details on which the opinion is based, and help explain the testimony.

THE DAMAGE IS REAL • Nearly a century ago, when credit was much less important than it is now, courts recognized a "ruined credit rating" as one of the types of consequential damages that can be recovered. In *Siminoff v. Jas. H. Goodman,* 121 P. 939 (Cal. Ct. App. 1912), the court recognized the value of good credit even when the victim had no future plans to take out a loan or use the credit. Other courts have even noted that, along with pain and suffering, harm to reputation, medical expenses, and lost earnings, "a ruined credit rating" is one of the "traditional harms" associated with personal injury. *See, United States v. Burke,* 504 U.S. 229 (1992). Assess the damage impact on reputation. You may want to develop your own credit damage intake form or download a model credit damage intake form to use from www.creditdamageexpert.com (click on CreditDamageScore).

Credit damage has even been sought in a bankruptcy case. *See, In re Barnes,* 177 B.R. 635 (Bankr. E. D. Mo. 1995). In *Barnes,* the court classified credit damage as personal damages for the purpose of calculating personal injury exemptions, and the debtor "was awarded a personal injury exemption for all claims that were personal in nature, such as humiliation and embarrassment, damage to … credit reputation, and mental anguish."

In *Pulver v. Avco Financial Services,* 227 Cal. Rptr. 491 (Cal. Ct. App. 1986), credit injury as special damages were properly made part of a libel suit. Including permanent damage to her credit rating, the plaintiff sustained economic damage and incurred loss of earnings and earning capacity. It is interesting to note the link the court draws between credit capacity and reputation and earning capacity.

CONCLUSION • More complete, realistic compensation for measurable damage is a more achievable goal than ever before. At the intake interview, including a few simple questions can qualify (or disqualify) the client regarding the economic damage caused by a change in cost of credit, usually indicated by a serious jump in the amount of the monthly payment or cancellation of credit privileges. The credit damage inflicted on the client can change the value of the damage demand by thousands of dollars, and damage suffered will be more fully compensated.

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PRACTICE CHECKLIST FOR

How To Identify And Intake The Credit Damage Client

In the overall picture of damages, credit damage can be more serious than generally believed. But to make it compensable, it has to be quantifiable. There are eight steps in the process.

1. Separate out those who will not qualify for credit damages. Find out how the credit was damaged post-injury. Pre-injury credit does not have to be perfect, but enough credit must be in use at the time of the injury to make a pre-injury to post-injury comparison of credit use and a determination of damages.

2. Learn the client's credit background. Find out if the client has and uses credit cards, how many, and the aggregate credit limit (must be at least $10,000). Car loan? Mortgage?

3. Find out the status of the credit report at intake. Once you determine that there is sufficient pre-injury credit use and experience and that the client has a relatively good credit record prior to the event giving rise to the cause of action, you will have identified a person who can be compensated for credit damage.

4. Collect the evidence. If the client is a likely candidate for credit damage compensation, advise the client to collect and save monthly statements and any financial notices, including Notice of Denial, Notice of Cancellation, Notices of Rate Adjustment, etc.

5. Find out about income. If the client has missed at least four paychecks resulting in late or missed payments causing any account closure or charge off, referral to a bill collector, bankruptcy, foreclosure, repossession, or any other adverse event, the probability for damage compensation is very strong.

6. Get a new credit report — the subscriber report. If possible, have the client immediately get a copy of a subscriber credit report — typically the most complete information is obtained from a mortgage lender. Have the client ask for a pre-qualifier service from the lender.

7. Monitor the damage. New timely information is added to credit files about every 30 to 45 days. Review the credit report for the appearance of additional derogatory remarks since the injury.

8. Communicate with the client.

Identify Compensable Credit Damage at Intake

Answers to these questions will help you identify the extent of your damage
.....May add thousands of $$$$$ to damage demand value

Credit Damage is not always immediate - sometimes it can take up to three months for the problems to appear. **It is recommended that you check your credit report at least every six months.**

Date of Injury _____ Are you the Only Injured person? [ ] Yes [ ] other_____

Type of Injury: [ ] Auto [ ] Truck [ ] Motorcycle Collision

[ ] Slip & Fall

[ ] Other _____

Did you lose more than one month of work? [ ] No [ ] Yes _____

Have you lost income? Starting Date _____ Loss of income to date $_____

Has the loss of income caused you to make late payments [ ] No [ ] Not Yet [ ] Yes

Will loss of income cause you to make late payments [ ] No [ ] Probably [ ] Yes

[ ] **Mortgage / Rent** # of Late Pymts _____ Date_____

[ ] **Credit cards** # of Late Pymts _____ Date_____

[ ] Have your credit limit(s) been reduced on your credit cards? [ ] No [ ] Yes _____

[ ] Have your monthly credit card payments been increased? [ ] No [ ] Yes _____

[ ]Have any of your credit cards been canceled? [ ] No [ ] Yes_____

[ ] **Car payment** # of Late Pymts _____ Date_____

[ ] **Collection Accounts** [ ] Pre Injury [ ] No [ ] Yes [ ] Post Injury [ ] Yes [ ] No

Have you been denied new credit? Date_____ by whom_____

Do you have written notice(s) of loan denial? [ ] Yes [ ] No

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Consultant / Expert Witness

Credit Damage Qualifying Intake Information -- *PI – Employment Case*

- Add these Questions into your standard intake form -

...measured credit damage may add thousand$ in damage demand total

Case Title _____ **Date of Injury** _____

Have you lost income? Starting Date _____ Loss of income to date $_____

Has the loss of income caused you to make late payments [ ] No [ ] Not Yet [ ] Yes

Will loss of income cause you to make late payments [ ] No [ ] Probably [ ] Yes

[ ] **Mortgage / Rent** # of Late Pymts _____ Mortgage Amount: $_____

[ ] **Credit cards** # of Late Pymts _____

Have your credit limit(s) been reduced on your credit cards? [ ] No [ ] Yes _____

Have your monthly credit card payments been increased? [ ] No [ ] Yes _____

[ ] **Total Credit Limit:** $_____

[ ] **Car payment** # of Late Pymts _____

[ ] **Bill Collector calls** [ ] No [ ] a few [ ] Too many

Have you been denied new credit? Date_____ by whom_____

Do you have written notice of loan denial? [ ] Yes [ ] No

[ ] Authorization form to obtain Subscriber credit reports for post injury credit info [Y] [N]

Notes:

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