



THIS CATALOG OF HIGHLIGHTED SECTIONS OF THE TRIAL TRANSCRIPT ALSO INCLUDES HIGHLIGHTED SECTIONS TO PROVIDE BACKGROUND INFORMATION.

BRIM TRANSCRIPT PART ONE

1. **Pg 118,119, line 18-20, 23- 6** (factoring)
2. **Pg 147, line 6-16** (Midland argues it's just an affiliate)
3. **Pg 149, line 18-25** (Midland argument over number of ACDV's responded to by automation pursuant to deposition of Angelique Ross.)
4. **Pg 150, lines 3-10** (Midland argues semantics over the word "investigates", Line 14, court says "Do they have robot employees?")
5. **Pg 152, lines 9-14,** (Brim placates Midland's silly argument)
6. **Pg 153, et al,** (argument over 3 percentage points as if that could affect the outcome of the facts at all)
7. **Pg 158, lines 4-7, 17-20,** (Midland makes false argument over which statute stated)
8. **Pg 159, lines 13-16** ("Midland agrees that it's responsible for the accuracy of the information it reports to the credit bureau"... undisputed)
9. **Pg 160, lines 4 to end** (court stops Midland's attempt to twist date facts) continued on page 161
10. **Pg 164, lines 21 to end and on next page** (Court says.... *"But not until then. They go all through – when Midland uses its automated batch interface system to process consumer disputes received in ACDVs, no employee of Midland reviews the ACDV dispute until it's been through the batch system one time."*)

BRIM TRANSCRIPT PART TWO

1. **Pg 7, lines 6-9** (objection to redacted contract)
2. **Pg 9, lines 18-25 to next page 10,** (Midland argues it is irrelevant that Encore is the parent company after losing the argument that MCM and Midland are just "affiliates".)
3. **Pg 10, lines 10-25 and onto next pg. 11,** (Brim argues the relevance of Encore's participation and standing as parent company)
4. **Pg 11, lines 7-11,** (Midland argues relevance of Encore's SEC 10K Report)
5. **Pg 11, lines 19 to end and next page,** (Brim argues the evidence contained in the 10K Report and its relevance) rest of the page is argument against to next page
6. **Pg 13, lines 11-18** (court overrules objection to the 10K)
7. **Pg 23 to 26,** (Court synthesizes undisputed facts of the case for the Jury)
8. **Pg 26, line 10** (Brim attny's opening statement begins)

9. **Pg 31, lines 6-10** (*“No interest was recorded, just as a footnote. Midland assigns interest by its own – it picks that number out of its own choice. But it’s run out of its San Diego office.”*) **lines 19-23**, (*“As a footnote, the evidence will show that later when they couldn’t collect, when Midland could not collect by parking it on a credit report, it tried to unsuccessfully sue in collection court and had to dismiss it.”*)
10. **Pg 36-37, lines 24 – 16**, (Description of the E-Oscar system used by CRAs and the use of ACDVs)
11. **Pg 38, lines 10-25**, (Description of Midland’s response to disputes and use of automation)
12. **Pg 42, lines 8** (quotes from Ms. Banks video deposition on the “investigation process” on the part of Equifax)
13. **Pg 45, lines 12-25**, (Brim Attny. ..*“then they received additional dispute calls from Mr. Brim. And they said – he said advised sent proof certified and will call back tomorrow. Again, bank statement showing the payment not proof. No settlement or paid in full letter included. Which means the only proof that Midland would accept was one that operated or arose out of a reality that did not exist.”* *“How can my client possibly get a settlement letter from Midland or Dell when he had paid the account?”*) **pg 46, lines 1-3** (*“Ostensibly, he could have negotiated and double paid it. And that’s what this procedure would have insisted upon.”*)
14. **Pg 47-, all**, Brim attny describes what evidence will be presented. **Pg 50 lines 7-13** (*“In this instance, cost efficiency, the evidence will show, overwhelmed any other concern or interest about the obligations to comply with the law or our client’s rights.”*)
15. **Pg 51, lines 5-12**, (description of Midland’s procedure for dispute made after 45 days,... *“But after 45 days, this is what Midland’s claiming or instructing its employees. The burden of proof is on the consumer to validate the dispute claim. Documentation must be provided to move forward with the dispute.... Now, the Court will, in closing, allow us to argue the law as to whether it’s ever a consumer’s obligation to prove a negative.”*)
16. **Pg 52, lines 11-20**, (description of Midland’s verbal dispute procedure... *“They outline 45-day verbal disputes. And what they tell the employee is the consumer makes a verbal dispute, tell them give it to us in writing. Written disputes, if it’s within 45 days and they provide a front and back of a cancelled check and settlement offer – it’s not one or the other.”*)
17. **Pg 57, lines 8-10**, (Brim attny asks, *“Why did Dell sell it? It is a garage sale of debt that Midland wants to hold to some priceless antique value.”*)
18. **Pg 64, line 25** (Midland Attorney Mr. Tompkins, *“This is my very first jury trial and my first opening statement ever.”*)
19. **Pg 65, lines 7-9** (... *even if the investigation was unreasonable, Midland’s actions did not cause Mr. Brim any injury whatsoever.”*)

20. **Pg 66, lines 1-3,** (“*Mr. Brims’ account was part of at least 64,000 accounts purchased from Dell in that single transaction.*”)
21. **Pg 71, lines 5-7,** (Midland Attny., “*Mr. Brim has to show that he suffered an injury caused by Midland’s actions.*”)
22. **Pg 77-92,** Direct examination of Gabriel Edrozo testifying for Midland in place of Angelique Ross. Mr. Edrozo confirms that even though Midland stated there would be no way they would accept proof that Mr. Brim’s account had been paid off would be a “*transactional detail report*” which his bank could not supply, there are no such requirements in the procedure manuals. Despite Mr. Edrozo’s 15 years in the banking industry he had never heard of a “*transactional detail report*” until the Brim law suit. (pg 84). On page 85 the following exchange takes place...
- a. Brim Attny...“*look at the top right hand corner. Page 3, It says for consumers that -- for any – all disputes that occur outside the first 45 days of your client buying the account, it says burden of proof equals consumer. Do you see that at the very top heading? Burden of proof equals consumer? Do you see that?*”
 - b. Mr. Edrozo... “*yes*”
 - c. Brim Attny... skip to line 19, “***Do you have any idea where Midland gets this idea that it’s somehow the consumer’s burden to proof the validity or invalidity of a debt your client has bought for pennies from Dell Financial?***”
 - d. Mr. Edrozo... “*I don’t know.*”
23. **Pg 92- Reading of the Deposition of Angelique Ross...**
- a. **Pg 94, (Q)**... “*And what automated system does Midland use?*” ... (A) “***We use batch interface.***” ... (Q)..“*How does that work?*” ... (A)... “***When a ACDV comes in, we use an E-Oscar system, our automated system can look in or look at the ACDV, match it, compare it to our account system information, and respond to the majority of the ACDVs.***” ... (Q)... “*what percentage of ACDVs are handled exclusively by the batch interface?*” ... (A)... “***I would say maybe 95 percent.***” ... (Q)... “*So I make sure I understand, when a ACDV comes in, the batch interface system can review the computer codes on the ACDV and compare the information contained on the ACDV with the information contained on the ACDV with the information in Midland’s system, and automatically verify that the information is accurate?*” (A)... “***yes***”
 - b. **Pg 105, lines 16-25** and next page...(Q)... “*With respect to Midland, Midland does not use any type of outsourced vendors for the handling of ACDV?*” ... (A)... “***No***” ... (Q)... “*You would agree that Midland is responsible for reporting accurate information to the credit reporting agencies regarding specific accounts, correct?*” ... (A)... “***Correct***” ... (Q)... “*Would you agree that Midland is responsible for the accuracy of the information that it reports specifically to the credit*

bureaus?" ... (A)... *Correct* ... (Q)... "I believe you told me earlier that you are familiar with the Fair Credit Reporting Act?" ... (A)... *Yes* ... (Q)... "Are you aware that Midland is responsible for investigating the disputes received on an account to the credit reporting agents?" ... (A)... *Yes* ... (Q)... "And Midland is responsible for conducting that investigation within 30 days?" (A)... *Yes* (Q) ... "Those disputes are all received via the ACDV through the credit bureaus?" ... (A)... *Yes* ... (Q)... "You told me 99 percent of ACDVs are handled electronically through the batch; is that right?" ... (A)... *Yes* the rest of this portion of the testimony has to do with the fact that there is no real instruction to the employees on how to manually respond to an E-Oscar ACDV.

- c. **Pg 108, lines 3 – 20, (Q)**... "How many disputes does Midland normally get, say, per week of – for ACDV?" ... (A)... *I would say maybe about 8,000.* ... (Q)... "Would that be the same pretty much every week?" ... (A)... *Yeah* ... (Q) ... "Then if my math is right, five percent of that would be about 400 are actually handled by an individual in the consumer relations department per week?" ... (A) ... *Yeah. I guess that is about right.* ... (Q)... "Have those numbers been the same from 2008 to today?" ... (A)... *I would say approximately the same.*
- d. **Pg 115, lines 12-23, (Q)**... "There is no information in the collection detail that Midland ever contacted Dell to question or investigate Mr. Brim's dispute?" ... (A)... *That's correct.* ... (Q)... "On Page 7, it indicates an interest rate of six percent." ... (A)... *Yes* ... (Q)... "That Midland is adding to the account?" ... (A)... *Yes* ... (Q)... "Do you have any information why Midland chose that interest rate?" ... (A)... *No* the rest of this section has to do with the obvious non-compliance with the law when Midland deemed the account collectible by suit after the expiration of the statute of limitations on the debt.
- e. **Pg 119, in reference to disputes with TransUnion and Experian, lines 4- next page, (Q)**... "No actual documents were reviewed in responding to the ACDV received on August 6th, 2008 from Transunion?" ... (A)... *No. The system didn't review that. But if there were review of the documents happening at that time, there would have been specific codes that the system could have recognized.* ... (Q)... "Transunion. Upon receipt of that ACDV, Dell was not contacted?" ... (A)... *No* ... (Q)... "Redstone Federal Credit Union, where the bank statement was from, was not contacted to verify whether the bank statement was valid or whether a payment had been made?" ... (A)... *No* ... (Q)... There is an entry on August 12th, 2008. An ACDV was received from Experian; is that right?" ... (A)... *Yes* ... (Q)... "And, again the batch interface system handled that dispute electronically?" ... (A)... *That's right.* ... (Q)... "Nothing was done differently in the handling of the first ACDV than the first?" ... (A)... *No* ... (Q)... "On March 19th,

2009 a third ACDV was received from – this one was from Transunion; is that right?” ... (A)... “Yes” (Q)... “And at that time, it states the dispute type was 109?” ... (A)... “Yes” ... (Q)... “And, again, the batch interface system responded to that ACDV?” ... (A)... “Yes” ... (Q)... “It was the same response as to the previous two ACDVs?” ... (A)... “Yes. It looks like it.” ... (Q)... “No investigation was done by a consumer relations employee into the dispute?” ... (A)... “No” ... (Q)... “No documents were reviewed by any employee of consumer relations in response to the ACDV?” ... (A)... “No” ... continued on next page...

- f. **Pg 121**, continued from above... (Q)... “And Dell was not contacted?” ... (A)... “That’s correct.” (Q)... “On March 20th, 2009, the very next day, an ACDV is received from Equifax?” ... (A)... “Yes” ... (Q)... “This fourth ACDV was also handled by the batch interface system?” ... (A)... “That’s correct.” ... (Q)... “Nothing new was done in responding to that ACDV?” ... (A)... “No” ... (Q)... “Then on February 25th, 2010, an ACDV was received Transunion?” .. (A)... “Yes” ... (Q)... “This fifth ACDV was handled by the batch interface system?” ... (A)... “Yes” ... (Q)... “With respect to all of the ACDVs that were received by Midland regarding disputes by Mr. Brim, each and every one of them was handled electronically by the batch interface system?” ... (A)... “Yes” ... (Q)... “No consumer relations employee ever reviewed the ACDVs?” ... (A)... “That is correct”
- g. **Pg 130, lines 13-25**, ... (Q)... “Are you aware of – you have already told me the records indicate that Midland never communicated with Dell regarding Mr. Brim’s dispute, correct?” ... (A)... “Correct” ... (Q)... “Midland never communicated with Redstone regarding it?” ... (A)... “Correct” ... (Q)... “And the only communications with respect to Mr. Brim’s account with respect to the reporting agencies are the ACDVs and the UDF responses?” ... (A)... “Those and I guess the regular monthly reporting.” ... next page, (Q)... “The regular monthly reporting is done monthly and then the ACDVs and the UDFs?” ... (A)... “Yes” ... (Q)... “There’s no indication that telephone calls were made to the reporting agencies, correct?” ... (A)... “Correct” ... (Q)... “There is no record in Mr. Brim’s account notes that indicate Midland contacted any other party regarding Mr. Brim’s dispute?” ... (A)... “Correct”
- h. **Pg 135, lines 3-19**, ... (Q)... “None of the employees in consumer relations actually ever responded to an ACDV with respect to Mr. Brim?” ... (A)... “Correct” ... (Q)... “Everything we’ve looked at with respect to Mr. Brim’s account was handled according to Midland’s policies and procedures at the time, correct?” ... (A)... “Correct” (Q)... “If ACDVs were received from other consumers, alleging the same thing Mr. Brim was alleging, they would have been handled the same way Mr. Brim’s ACDV was handled; is that correct?” ... (A)... “It would depend” ... (Q)...

"If everything were the same as Mr. Brim's response, then the response to the ACDV would be the same?" ... (A)... "That's probably likely."

- i. **Pg 150, lines 22-25** and to next page, cross examination by Midland attny.... (Q)... *"So basically, the ACDV comes in from Transunion. The data matches. And it is verified as accurate by the system?" ... (A)... "It probably would have been verified. Probably modified to show that there was a dispute. And based on the codes and the queue location, the information compared and then responded to is modified"* down to line 23, ... (Q)... *"Does Midland not have a copy of that ACDV response? Do they?" ... (A)... "I don't think so."*
- j. **Pg 152**, continued cross... (Q)... *"They can print from the system but only for a period of time; is that right?" ... (A)... "Yes" ... (Q)... "Is it six months?" ... (A)... "120 days" ... (Q)... "So after 120 days, any ACDV response would not ve available for print by Midland?" ... (A)... "That's correct".*
- k. **Pg 154**, continued cross, lines 13-25, ... (Q)... *"Does this information refer to the portfolio within which Mr. Brim's account was obtained by Midland?" ... (A)... "Yes" ... (Q)... "And it has a purchase date of October 10, 2007?" ... (A)... "Yes" ... (Q)... "And account type – do you know what CL represents?" ... (A)... "I don't know" ... (Q)... "The seller is identified as Dell Financial Services?" ... (A)... "Yes". Continued to next page, ... (Q)... *"Number of accounts, 63,346?" ... (A)... "Yes"**

BRIM TRANSCRIPT PART THREE

1. **Pg 17-18**, Reading of deposition of Ms. Banks of Equifax:
 - a. Line 25 to next page, ... (Q)... *"When Equifax receives documentation from a consumer, does Equifax ever send those actual documents out to a furnisher of information?" ... (A)... "We do not. We utilize the FCRA relevant information field to notify the creditor specific information that the consumer has noted as part of their dispute." ... (Q)... "And so Equifax's policy of not sending out the actual documents received from consumer does not indicate whether Equifax used the document – views the document as sufficient or not on an account; it's just that Equifax never actually sends out the documents?" ... (A)... "That would be correct. And let me just state for the record Equifax does not gather an opinion one way or the other." ... (Q)... "On documentation from a consumer?" ... (A)... "Well, on whether the information is accurate or not. As previously testified, if we are able to accept the documents and we have received from the – excuse me. From the consumer disclosure, we will update the file based on that. If they are not documents that we can use, we will contact the creditor."*

- b. **Pg 20, lines 22-25, ... (Q)...** *“And did Equifax also rely on Midland Credit Management to investigate Mr. Brim’s dispute regarding the balance of the account?” ... (A)...* **“Yes, we did.”**
2. **Pg 26, Reading of deposition of Steven L. Newnon of Transunion...** beginning at line 8 continued
- a. (Q)... *“And when a letter is received from a consumer, what is Transunion policy for handling a letter from a consumer?... (A)...* **“It is to review the letter and basically do what the consumer requests.”** ... (Q)... *“If that letter contains a dispute, regarding a specific account, how would Transunion handle that dispute?” ... (A)...* **“We would pull up the consumer’s credit report. We would review the actual information, what they were disputing. And we’d initiate an investigation in – where we would go back to the creditor to verify whatever the consumer was – had a dispute with.”** ... (Q)... *“As part of that investigation, how do you actually go back to the original creditor?” ... (A)...* **“Most of the time, it’s done electronically.”** ... next page; (Q)... *“And is that done pursuant to an ACDV?” ... (A)...* **“That is correct”** ... (Q)... *“And will you tell the jury what an ACDV is?” ... (A)...* **“That is an automated consumer dispute verification form.”** ... (Q)... *“And those are all – all sent electronically to the data furnisher?” ... (A)...* **“Yes they are”** ... (Q)... *“Does Transunion also maintain the original letter from the consumer disclosure?” ... (A)...* **“Yes, we do.”** ... (Q)... *“And how does Transunion do that?” ... (A)...* **“We scan that into our on-base database.”** ...
- b. **Pg 29-30 begin line 21;** ... (Q)... *“When Mr. Brim telephoned Transunion on July 29, 2008, and indicated to the automated system that he had been denied credit, did Transunion undertake any investigation to determine whether Mr. Brim had, in fact, been denied credit or whether his credit report had been viewed by a potential grantor?” ... (A)...* **“We would review if there was a recent inquiry and then provide him with an updated report. But that is all we would do.”** ...
- c. **Pg 30, line 11;** ... (Q)... *“And can you tell the jury, please, what a regular inquiry is for a credit transaction?” ... (A)...* **“They view the credit information on the consumer’s credit report. The account information and possibly scores, as well.”** ... (Q)... *“Would they have had access to view all account information being reported regarding Mr. Brim if they were under the regular inquiry section?” ... (A)...* **“Yes. They would.”**
- d. The following pages describe how Transunion informed Midland of the exact nature of the dispute and the date the consumer had paid the account long before Midland acquired it and the following was what the result was after Midland responded to the ACDV... **Pg 36, line 19...** (Q)... *“And what information did Transunion provide to Midland Credit Management regarding Mr. Brim’s*

dispute?" ... (A)... *"We provided what the consumer stated within his letters; that he claims he paid the original creditor before collection status or paid before charge-off and to verify the account status, pay rating, current balance, amount past due, and payment history. And also we left a comment stating that the consumer stated he paid it on 11-8, 2004."* ... (Q)... *"And what was Midland Credit Management's response to this ACDV?"* ... (A)... *"That they verified the information as being accurate and they also requested to have the remark changed from the collection status to account in dispute."* ... (Q)... *"And as a result of Midland Credit Management's response to the ACDV by Transunion, the Midland Credit Management account remained on Mr. Brim's credit report?"* ... (A)... *"Correct"* ... (Q) *And in response to the ACDV, Midland Credit Management indicated that the account was being reported correctly?"* ... (A)... *"Correct."*

- e. **Pg 47, lines 2-6** after multiple disputes and ACDVs to Midland.... (Q)... *"As a result of Transunion receiving the ACDV response from Midland Credit Management, did Midland Credit Management account continue to be reported on Mr. Brim's credit report?"* ... (A)... *"Yes, it did."*
 - f. **Pg 49, lines 4-22;**... (Q)... *"Mr. Newnom, does Transunion rely on its credit data furnishers to investigate consumer disputes when they are received regarding a specific account?"* ... (A)... *"Rely? They're required to look into the information."* ... (Q)... *"And – I'm sorry."* ... (A)... *"I'm sorry. Yes. They are relied. To look into the account if the consumer disputes the information, yes."* ... (Q)... *"In this particular case, did Transunion provide Midland Credit Management with Mr. Brim's disputes regarding the account?"* ... (A)... *"We relayed those disputes to Midland, yes."* ... (Q)... *"And did Transunion rely on Midland Credit Management to investigate those disputes and respond?"* ... (A)... *"They were required to respond to the investigation, yes."*
3. **The next section...** is testimony by Jamon Brim, all of it is relevant to Midland's actions in regard to this case and Mr. Brim's multiple attempts to resolve the issue. Begins at page 63... Cross examination begins on page 124. Redirect begins on page 168.
 4. **Pg 183; jury asks questions of Mr. Edrozo on redirect;** Lines 19-25 continued to next page...
 - a. (Q)... *"What information did Midland Credit Management seek from Dell concerning this dispute?"* ... (A).. *"No information."* ... (Q)... *"And why was the greater burden placed on Mr. Brim to produce evidence to close the account?"* ... (A)... *"We were unable to contact Mr. Brim based on receiving the cease and desist."*

- b. Redirect by Mr. Bennett (Brim's attny) **pg 184 line 14**; ... (Q)... *"Not to be repetitive, but you've heard a lot of about transaction logs and the argument that my client sent a cease and desist. That was your answer. You said the problem Midland had was it couldn't do anything more because my client had locked it out from contacting him with a cease and desist. That's essentially what you just said, right?"* ... (A)... *"Right."* ... (Q)... *"And you heard your counsel make those same kind of arguments when he was talking with my client?"* ... (A)... *"Correct."* ... (Q)... *"Let's put this in the context of the real world. What would midland have done differently had there not been a cease and desist letter, had my client not said, quit your harassing debt collector calls or whatever else he was doing? What would you have done differently if this theoretical obstacle didn't exist?"* ... (A)... *"We would have had a conversation with him our first contact."* ... (Q)... *"And that conversation would have done what?"* ... (A)... *"Would have –"* ... (Q)... *"It wouldn't have mentioned transactional detail log, right? You've already said there's nothing in your policy that permits that to matter."* ... (A)... *"No. But request the front and back of the check."* ... (Q)... *"But accompanied by a settlement letter from Dell; that's what the policy is?"* ... (A)... *"Correct"* ... (Q)... *"Not just the front and back of a check?"* ... (A)... *"Correct"* ... (Q)... *"So if he had submitted a transactional detail log or a bank statement or a front and back of a check, they all would have been treated exactly the same; that is, they all would have been dependent on whether Dell had given permission to release this account through this settlement letter, right?"* ... (A)... *"I don't know."* ... (Q)... *"Well, there's nothing in any of these procedures, 2010, before 2010, after 2010 - - there's nothing in your procedures that would have allowed the deletion of this account, based on any telephone communications that you might have had with my client, unless he had a Dell letter, saying it was okay to release this account, right?"* ... (A)... *"Or a copy of the front and back of the check along with the letter, correct?"* ... (Q)... *"With the paid in full letter?"* ... (A)... *"Uh-huh (indicating yes)."* ... (Q)... *"Both. Both are necessary conditions, correct; we already went through that in your first testimony."* ... (A)... *"Correct"* ...
- c. In regard to Midland having subpoenaed a bank statement from Mr. Brim's dispute after the filing of the federal suit on June 18th 2010, **page 189, line 10**, ... (Q)... *"Yeah. Do you have an explanation for why after your lawyers had a subpoena response from June that it still took three months before it was taken out?"* (meaning out of the credit report)... (A)... *"I don't, no."* ... (Q)... *"If this subpoena response with the affidavit from Redstone had been provided by my client but he did not give you a paid letter from Dell, it would have been treated exactly as an unattested, unauthenticated bank statement, correct?"* ... (A)... *"I*

don't know." ... (Q)... *"Well, if you following your procedures?"* ... (A)... *"I don't know. There may be other procedures in other departments I'm not aware of. We're talking about a legal document."*

- d. **Pg 193, line 7; Court....** (Q)... *"We're talking about Midland's policy. Mr. Bennett asked you if the bank statement, such as the one that was sent by Mr. Brim to Midland, is deemed invalid, according to Midland's training policies."* ... (A)... *"Yes, it is."*
5. The following excerpt is taken in total, discussion and motion was heard outside the hearing of the jury; **Pg 195 begins at line 10...** (Midland attny, Tompkins)... *"Defendant would move for judgment as a matter of law in whole or in part. And first, I would say that we move for judgment as a matter of law on the willfulness claim in this case. I've cited to Your Honor in the written motion a number of cases stating the type of evidence that are necessary to rise to the level of willfulness. And I do not believe the plaintiff has offered any evidence that Midland's actions in this case rose to a conscious or reckless disregard of rights under the law...."*
6. **Line 23,** *"And ask for a judgment as a matter of law on all claims, both negligence and willfulness, because the plaintiff has not presented any evidence of the standard of care for a reasonable investigation, which is, of course, the plaintiff's burden..... In addition, plaintiff has presented insufficient evidence of injury, which is an essential element of the claim under the FCRA. The only evidence we have heard has been from the plaintiff himself. And in the written motion, we have cited Your Honor a number of cases requiring corroboration. And I have heard no other evidence that Mr. Brim suffered mental or emotional distress.... Finally, Your Honor, we move for a judgment as a matter of law on the basis the plaintiff has not presented sufficient evidence of causation for any injuries.... (The rest had to do with denial of credit etc.)"*
7. **Plaintiff's response, Brim attny Bennett, pg 198 begin at line 7;**... *Judge, the heading in their first argument, insisting that, I guess, there be a standard of care -- maybe an expert witness -- is not the law. .. There is a case which I, by tomorrow morning if the Court needs it, can provide you that you do not need an expert witness to establish standard of care.... The standard in Johnson v MBNA, which has been cited without any negative authority since its 2004 adopted in Fourth Circuit, is that it must be reasonable standard.... The Court has already provided its draft of the jury charges that state the reasonableness standard that has been delivered in nearly every furnisher case that it's a -- as in all reasonableness, it is a question of the circumstance and some other factors. But there isn't a standard of care. ... It also suggests, Judge -- and at the end of our evidence we'll make our motion that the -- there is no evidence that any investigation was done at all. So that is, you have two possible violations..... The one violation is that what was done was inadequate investigation. It didn't go far enough. It wasn't as*

thorough as it needs to be. But if you imagine a defendant taking a piece of paper and putting it in a trash can and when they received a dispute, that's no investigation. It's not an unreasonable one. It's none at all.

8. **Pg 199, line 14 Bennett continues;***... In the case of the Equifax ACDV, there's evidence that Equifax sent an ACDV in August of '08. And there was zero investigation done by Midland. With respect to all the others, there is evidence only that the automated interface, which is not an investigation under -- it's not a bad investigation or mediocre and unreasonable. It is not investigation. You have two reasons. First, this isn't the law. And second, they don't even get to argue that their investigation was reasonable on the evidence if this was the evidence that existed at the end of the trial. There wasn't an investigation done.... The second -- and by the way, Chaing has been cited here. Chaing is a bad case for consumers but not on this issue. Chiang is bad because it holds the principle that you can't use the Fair Credit Reporting Act as a declaratory judgment method when there's a legal dispute about a debt. And if you look at Chiang, this is like the anti-Chiang. This is no legal dispute. There never has been..... There's no question in Chiang there is an affirmative defense. But then Chiang sites another Second Circuit case in which there was an affirmative defense under the Truth in Lending Act and for fraud. And in both of those instances, the Second Circuit said that's a legal defense; not a factual one. That's different than, say, Cushman where the consumer said they never signed the account....*
9. **Bennett continues line 21;***... And certainly in this case, this is clearly factual. So it's odd to site the case that says exactly the opposite of what you would suggest. But in this instance, certainly we don't have to prove a standard of care. No Court (continue to next page) ever. Not one. I don't need to say take the majority path. I can say no Court has done this. And I can say that with some authority as one of the contributing authors in the FCRA manual..... The second argument is plaintiff has not offered any evidence –
 - a. **Court;** You can skip that one.*
10. **Bennett;** *... I would just note, Judge, we would adopt our omnibus brief, which we detailed at length on this.... Number 3, plaintiff has presented insufficient evidence of injury. No evidence of economic injury. And Judge, again, we would adopt that. But the standard for economic injury is more than simply proving a specific higher interest rate. And in fact, both in the jury instruction cites as well as the omnibus memorandum, the – you can establish the loss of credit opportunities a deterrent from applying for credit. And you can prove, as I'll address in the last motion in limine, that by circumstantial evidence – and this is the reason we asked for the circumstantial evidence instruction. The cites that we offer in our omnibus memo – I don't need to repeat it. They're all there -- is if our client can show they applied for – he applied for credit – and we know that because there are the inquiries that are uncontested – he did not get the loan. And*

there's no other explanation that would defeat that my client's Midland account was a substantial factor. The jury is entitled to make an inference. A common sense inference that this would have been a substantial factor. And that on the -- uniformly, and I cited all the case, that's been addressed.

11. **More discussion on the applications for credit and CRA testimony...**
12. **Bennett continues, line 25 to next page;** *Your Honor, the standard in -- the history under Safeco reduced threshold. The Fourth and Fifth and the Eleventh had all adopted a conscious disregard knowing standard. The Supreme Court adopted Third Circuit and Ninth Circuits, reckless or knowing. And reckless, you have the case cites. The jury instruction that we have asked for, which we will argue for, is taken verbatim from those. Recklessness -- and from the Safeco decision -- is a balancing test of whether or not under the circumstances the defendant took an unjustifiable risk of violating the law. In this instance, they adopted a procedure that for either 95 or 99 percent of the 8,000 disputes they receive a week, they do no investigation whatsoever. They have a procedure which says they will completely default to the original source, and they will not make any corrections themselves ever. That is reckless..... The other factors for recklessness are how long it occurred. And to be candid, having done all these, I have never once had a defendant keep a derogatory item on a credit report nine months into litigation. It's audacious. I've never had that. ... The reason the credit bureaus reacted the way they did in this case with the early disputes, they sent ACDVs upon filing to the defendant so they could cover themselves. But that itself is reckless.*
13. **Bennett continues pg 205;** *line 5, ... You're sued. June 2010, your attorneys obtain an attested document that says this bank statement is accurate. And they continue to keep it on for another three months. That's reckless.... This is -- I just don't think reckless is available as a matter of summary judgment for a plaintiff because it's such a hard standard. But if any case, this should be it.*
14. **Tompkins responds, pg 206, line 9...** *I think the fact that Midland did not delete this as soon as the lawsuit was filed actually slants the other way. Because they still had no evidence until that transactional detail report was provided to Dell and Dell was able to trace the account and determine that they had misapplied Mr. Brim's payment to another customer that this was not an unpaid account. And they did not delete it until they actually found that out. And they weren't going to just delete it because they were sued. I don't think that rises to recklessness.*
15. **Court, line 25 continued to next page;** *Okay. Have a seat. I'm going to deny the motion. I'm also going to deny the motion with respect to willful conduct, which I think is a jury question under the facts presented by the plaintiff in this case.... But I did look at Plaintiff's Exhibit 35, which is Midland's procedures for what a consumer must do to validate a dispute claim after the 45 days. And it goes on the burden of proof on the*

consumer -- it lists what the consumer should do. And under Five over on the left side, it says pay prior to purchase, ask for method, amount, and date of payment, which he furnished, verify payment was made before accounts purchase date. He did that. If payment made after purchase date, process as a direct pay. And I'm not sure what that is..... But I do know that by virtue of Midland limiting this to a check, front and back, plus a settlement letter is something that the plaintiff could never have done in this case because he didn't even have a check..... And the defendant's representative has testified here in open court that he didn't know what a transactional detail report was until five months ago. ... I will also say the fact that Midland (continued on next page) wrote Equifax back after Equifax had corrected its credit report to reflect that it was zero and reported it back, as it was, with a higher balance, I think to at least -- well, I think that's willful, but that's up to the jury to decide. I think there's enough to go to the jury on this issue..... And finally, I know that Mr. Brim did not get or did not look at the complaint he was sued with in small claims court. But he did say it worried him that he knew he had gotten sued because he put the letter together with -- the letter from Gloria Schwartz together with the sheriff's note. But to that suit, which is in evidence, there is an affidavit by Midland. And it's Plaintiff's Exhibit 17 that says, by virtue of her relationship with Midland, I have personal knowledge of all relevant financial information. All relevant financial information concerning Midland Credit Management, Inc.'s Account Number 8525203719, which includes the following information: That the defendant -- that would be Mr. Brim -- did fail to make payments on the account and that demand has been made for defendant to make payment of the balance owing on the account described above more than 30 days prior to the making of this affidavit.... And then it goes on about the lawyers. And the amount is \$1,381.00. And she states that under oath in April of 2008, which was after Mr. Brim had gotten the -- called them -- after he finally received the letter that was sent within the 45 -- day period and told them that it was incorrect.... And I find there is sufficient evidence for it to go to the jury on the issue of willfulness, and I'm going to overrule motion.

BRIM TRANSCRIPT PART FOUR

1. **Bennett's Summation: pg 36, line 21** continued to next page... *"The FCRA is to protect consumers against the trend towards the establishment of all sorts of computerized databanks -- this is in the early 70's -- that place the consumer in great danger of having his life and character reduced to impersonal blips and keypunch holes in a stolid and unthinking machine which can literally ruin his reputation without cause. That's why we're here..."*
 - a. **Pg 37, line 20;** *"You've heard the law and we'll talk about it more. But the question in this case is simply when the credit bureau disputes these ACDVs,*

when those disputes were forwarded to Midland, did it do a systematic detail search and inquiry? That's it. That's all. If we prove that, we win. If we prove it was negligent or reckless, we win, period."

- b. **Pg 38, line 19:** *"This entire trial, from Midland's prospective -- and they called two witnesses, Dell and Redstone. This entire trial has been about whether my client failed to do something, whether my client failed to provide a transactional detail report. And I admit, you know, my finance degree was in 1989. So I don't know what a -- maybe everybody else knows what that was. But their witness didn't know what that was, and he's been 15 years in this business"*
- c. **Same page line 8;** *"If we were presenting you a case where my client in the day that Midland got it --he wrote a letter, one dispute, one credit bureau forwarded that dispute to them and Midland verified it and he rushed down to federal court and said, I want a federal lawsuit, that's a different world."*
- d. **Same page line 23;** *"This isn't that one instance. And this is not one ACDV. There are nine of them. Right? The evidence is the defendant admits they received five, maybe six. They said they didn't get the Equifax one in August of '08. But when this lawsuit was filed, the credit bureaus took that as a dispute and forwarded ACDVs. When this lawsuit was filed, they still verified it" "Now, other distractions -- Let's talk about what I projected would be a "look over here, not at the law" argument by the defendant." ... "Well, Dell was never contacted at all. Not once. And we want to talk about Dell?... This is the contract by which Midland bought for five cents on the dollar -- bought this principal balance for 70 bucks, about."*
- e. **Same page line 17;** *"Remember they receive 8,000 disputes a week. Why didn't Midland send this to acquisitions, ask for copies of documents or anything? Because they have to pay for it. Past the first 20 percent of their accounts -- they have to buy this. And that can go up to \$50.00. It will cost them \$50.00 if they have reached those thresholds to research a 70 dollar account."*
- f. **Pg 41 line 1;** *"is this Dell's problem; that is, Dell had its own credit-reporting issues. You saw -- you heard that testimony. And Dell was responsible for Dell's. But it isn't Dell's trade line that is disputed in this case, and it's not Dell's credit reporting. And Dell couldn't have done anything about Midland's credit reporting to the credit bureaus if it tried." ... "The credit bureaus all testified this was Midland's trade line. Midland was responsible for it. Midland's employee, Ms. Ross, testified that it knew. She knew it was responsible for its accuracy. But you don't need me to argue it." ... "The Dell contract prevents this distraction under compliance with law. The purchaser represents and warrants that it will comply with all requirements of federal laws. And if you want to turn to 16, well, if Dell is*

at fault, if Dell is at fault, then Midland could have gone after its industry partner. Look at 16. They can go back, and they could make some claim against Dell. Why shove on to my client's back Midland's problems with Dell?"

- g. **Pg 41 line 1;** "And if you look at page 20, (contract between Dell and Midland), now, earlier in this it defines an ineligible account, right? It says Dell will not sell accounts that meet the following criteria, consumer file bankruptcy, other things. But one of them is it's been paid off"... "What happens? Well, the remedy Midland would have had on this Paragraph A is to make Dell buy it back. Go get its \$70 back. So why is this our client's fault? Why is Dell and Midland's mistake my client's problem?" (end of page to next)... "But if you recall, the Fair Credit Reporting Act's purpose is to stop shifting and imposing that automate batch interface machine problem on the consumer. And that's where the externality problem is."... "It is okay if Dell wants to save money by using I Energizer in India. I'm not – you know, it's not proper to say you shouldn't send business to India. If Dell wants to do that to save money, it's fine. But when its vendor, because of the way that these cost structures have been set up -- and Midland share the same. I'll go through them at the end."... "Remember the annual report. Cost is all their business model. Cutting costs, reducing costs, that's what they're about. Well, if you want to save money, do it by efficiencies. Negotiate with your paper vendor. Work out a five-year contract with your vendor. Do whatever you need. But only externalize the cost of doing an investigation, the one that the law says Midland has to do -- don't put it on my client."... "And here's what happened. And I came in this case later than my other lawyers. So a lot of this I'm learning as you learn. The Dell deposition. What happens? Well, this is what (continued on next page), happened: Dell used a vendor, I Energizer to take the payment. After that occurred – and the example that I talked about with my co-counsel over dinner last night is this is like a consumer bringing in a payment in person and giving it to the receptionist in a business. No one in this case disputes that Dell was paid. That's not what this dispute has ever been about."... "the dispute is where is Dell's money? The money was paid to the receptionist. Dell is unhappy because the receptionist ran off with it or lost it. Dell knows, Midland knows that our client paid. But they don't know where they put the money. So they're externalizing the research effort on my client. Want him to be the private investigator. Want him to do – go to his bank, which Redstone testified why doesn't Redstone provide these transactional detail reports to Dell? Because Dell could do it itself from its end."... "How many \$954.12 payments came in from Redstone Credit Union that day at that time? How hard is that to research or for Midland to have in its investigation demand Dell research? How hard? Why is it

hard? Because it's I Energizer (next page), in India that took the money. If they want to save money by using I Energizer in India, if they want to save money, that's fine. But you do not externalize that on the consumer. Particularly in light of a regulatory regime that says it is not his obligation to do an investigation."

- h. **Bennett continues pg 45 line 9;** *"Let's go to transactional detail report. Let's talk more about this."... "It's frustrating to have a trial about whether or not an investigation occurred when the ACDV was received turn into this whether my client should have known what a transactional detail report is. It has nothing to do with the case. Has nothing. And it's -- for someone like a lawyer, maybe someone like yourself, there's a natural curiosity, we want all T's crossed, I's dotted. We want to understand exactly what happened. A perfect view. But it's irrelevant. It's irrelevant."*
- i. **Bennett continues pg 45 line 20;** *"There is nothing in the instructions that suggests my client had any obligation to do an investigation. And there is something important, and I'll go through these instructions in a bit. But if you could help me and turn to page 5 of your instructions."... (next page)... "Is it the end of the world if Midland had just said, we don't know what happened; we're just taking it off? Is Midland's 30-million-dollar business going to grind to a halt for that 70-dollar account? No."... "And the law contemplates that. You have already heard and you've already read the Midland procedure that says it's the consumer's burden. Past 45 days, it's his burden to prove he doesn't owe the money."... "That's not the law. You have three possible realities that could be the result of an investigation. One, and this is the bottom section. But under E, you can find that the information was complete and it was accurate; that is, the investigation required by the Fair Credit Reporting Act when the ACDVs came in, Midland could have actually conclusively determined we are certain that he did not pay the debt. Two, they could determine we are certain he paid the debt -- and we think that conclusion is self-evident. But Midland did not. So what's the third option? The third option is no one knows; that is, when Midland received the investigation, it was unable to verify that it (next page), had been paid or not paid. It couldn't determine. It couldn't determine because it didn't want to go to Dell to get Dell to go to I Energizer."*
- j. **Bennett continues pg 47 line 5;** *"Well what happens if there's uncertainty? The law is it cannot be verified. It must come off the credit report. That's it. And you shouldn't have to hire lawyers and look at all the lawyers here and come to federal court to get your credit report fixed. And you shouldn't have to stay in federal litigation nine months before a defendant wakes up and does it."... "Other issues, why this is a total distraction. Midland's own witness never even*

heard of this. Midland still believes that even if Midland had received a transactional detail report, they testified it wouldn't have mattered unless they had a permission slip from Dell to release this.”... “Midland – the defense lawyers – all right. The defense lawyers issued a subpoena. That was the evidence you've heard – for the bank statement. Never issued a subpoena for the transactional detail report – the supposed really important document. Never. In fact, you (next page), heard testimony that it was received only when Mr. Brim's lawyers had to go find it. Figure out what it was. But it was so important, no subpoena?”... “They still waited a month. They received it early August. If it was that earth-shattering news that so conclusively ended this; and that is, more importantly, if Midland is telling the truth that the reason they didn't delete until September had anything to do with this transactional detail report, this is disproven by their own conduct.”... “The irony here at the bottom – and maybe this is as irrelevant as the whole transactional detail report. But giving \$954 – and I'm – and maybe this person in California that received the credit is deserving. But the irony here is that the way Dell and Midland have set up their shop is to put all of this on my client.”

- k. **Bennett continues pg 49 line 6;** *“Another distraction. You're getting debt collector calls. You owe this money. I don't. Here's my bank statement. I've told A, B, and C this. You owe this money. I don't. So we send a letter that says, stop harassing me. Stop calling me. Here is the information you would need. And now Midland is saying, oh, that's the reason we never fixed anything.”... “Well, you have to judge not just the witness. You have to judge a party in this case. Midland is representing to you that the reason it did not correct his credit report is because he said, stop calling me. And that's not true.”... “The evidence when I recalled their witness, he testified it wouldn't have matter. What would they have done? They would have heard for the umpteenth time, I paid this debt. Here's the information. And for the umpteenth time, never mention anything about transactional detail report. And to represent to you with a straight (next page), face that that has anything to do with why it failed to do an investigation when the credit reporting agencies contacted Midland is disingenuous.”* The next section has to do with Midland's attempts to smear the plaintiff and insinuate that he was a liar and claim that they did not continue re-reporting etc. and Bennett points out that the jury has the documents provided from Midland's own records to show the truth. **Then on line 24 of page 51 and continuing to the next page...** *“The insinuation is, well that somehow anything else besides this live, painful, unpaid collection account could have harmed my client's credit.”*
- l. **Bennett continues pg 52 line 9;** *“This is what this case is about. And you have the annual report, Exhibit 82. This is what this case is about. And why do we have*

– why does anyone make any pretense otherwise?”... “This is a case about Midland attempting to minimize its costs. That’s what it’s about. That’s its target in its annual report. Midland says, to stay on track, it’s got to keep its costs below that number.”... “Otherwise, two excerpts, Page 2 – and you don’t have to look, but this is so that if you want to – page 2 and explain it – page 2 of their annual report, their big strategy is cost efficiency. And then page – and in order to survive in this business model, the defendant says we’ve got to keep our costs especially low. And that’s what his case is about.”

- m. **Bennett continues pg 53 line 12;** “The burden of proof, preponderance of the evidence, not beyond a reasonable doubt like in a criminal case or even clear and convincing evidence, the standard when you have to prove fraud.”... “In this instance, preponderance. If you think 51 percent more likely we are right on the point than the other side, we win that point. If you think at a 51-percent point the defendant was negligent or willfully violated the act or my client suffered damages, then that point is for the plaintiff.”... “There are two kinds of evidence. And these cases – nobody contemplated taking the (next page), credit reporting dispute process into federal court. Certainly Mr. Brim didn’t. So your evidence is varied. Some of it is direct. Some of it is circumstantial.”
- n. **Bennett continues pg 53 line 12;** “Direct is objectively determinable, expressed in front of you. Indirect is you have to draw a common sense inference.”... “The Fair Credit Reporting Act. You’ve heard the actual text of the statute. And it’s nothing new to Midland. This is what the law is. 1681(1)(a), those are the ACDVs.”... “So let’s make a point here. The question about, well, if Midland was not allowed to contact you or any of the discussions, rather, about what my client and Midland would have had to do as parts of an investigation discussion are irrelevant.”
- o. **Bennett continues pg 55 line 14;** “But once my client makes a dispute, the ones that come through the credit bureaus, the defendant picks up a world of obligations.”... “Now, there are two types of claims. And we’ll go through – well, actually, I’m sorry. Go to the Fair Credit Reporting Act with E at the top.”... “We believe there was never an investigation. You’ll see the definition. It’s not a matter of did they do enough of an investigation or even was it reasonable. An investigation is a deep, searching inquiry. It’s (next page), not an electronic pawn where you just have an electronic blip you’re knocking back and forth. An investigation, as we’ll talk about in the instructions, is a deep, searching inquiry. It is not having a computer say, no. The roadblock means no investigation.” Discussion follows as to the difference between negligence and willfulness. **Line 23, same page and continued to next page.** “And willfulness will be reckless. Both

of them involve balancing tests that consider the cost of doing more such as deleting a 70-dollar account versus the potential impact to my client, potential impact to other consumers in this country.” “Factors to be considered. And this was the law before Mr. Brim ever brought a lawsuit. The factors to be considered in determining whether the investigation was reasonable – and this is if you even find there was an investigation at all attempted.” ... “Factors to be considered, whether the consumer alerted the defendant that the information was unreliable, whether the credit bureaus alerted the defendant that it was contested, and the cost of verifying the accuracy versus the harm of reporting.” ... “I mean, the way that this system is set up – the Fair Credit Reporting Act is set up is to give – you don’t want anybody rushing into court because they have an inaccurate item on their credit report. So you go home, pull up your credit report. Wow. That’s inaccurate. You can’t go to court. You shouldn’t be able to go to court. We have to give creditors an opportunity to fix it. You don’t have to give them ten opportunities or two years’ worth. My (next page), client did. But that’s the way it’s set up.”

- p. **Bennett continues pg 58 line 9;** *“Courts have accepted definition of investigation from a dictionary. Same dictionary you can get in San Diego, I’m certain. An investigation.” ... “Whatever you want to think about transactional detail reports or whether my client had three mortgage denials or one or the like, think: When it received the ACDVs, is there any evidence at all – at all that a detailed inquiry of systematic examination was done?” ... “When the ACDVs came in, was there any evidence that there was a careful inquiry? No. 95 to 99 percent of the time, it is an automated batch interface system.” ... “My client – 100 percent of his disputes were automated batch system. There was never a systematic or detailed inquiry.”*
- q. **Bennett continues pg 59 line 5;** *“If it knows it’s inaccurate, it can’t keep publishing it. Even if it really wants my client’s help at finding the money at IEnnergizer, it doesn’t have the right to use his credit report, to hold it hostage, to force him to work on behalf of Dell as a cost savings.” ... skip to line 15... “The facts you heard the Court read in the beginning of the trial – they acknowledge that all they do with these disputes is the automatic system.” ... skip to line 22... “When is it reckless? It’s reckless if you run a risk of violating the law substantially greater than the risk associated with a merely careless reading.”*
- r. **Bennett continues pg 60 line 1;** *“8,000 disputes a day. And if you had the misfortune of having me as your plaintiff’s lawyer in a future jury, I cannot imagine you would ever hear of any creditor – of Capital One or MBNA or of anyone who receives 8,000 disputes a day. Having a consumer advocate that*

does FCRA work – 8,000 disputes a week, I mean, is a remarkable number.” ... “Are all of those 8,000 consumers making up their dispute? Are they all individuals that should have known to go get a transactional detail report? And are they all – we don’t know. We do know all of them are disputing accounts that were bought for five cents on the dollar.”

- s. **Bennett continues pg 68 line 4;** *“Punitive damages. You have a standard for punitive damages. There were no FCRA procedures. There’s no evidence of training. The automated batch interface system is 95 to 99 percent of the time.” ... “Small amount of money. Cost is the sole factor. And there is zero, zero remorse. As a plaintiff’s lawyer, the hardest defense strategy is to come in here and go, look, you know, we screwed up. Do you know how much data we have? We screwed up. That’s not what you have. You have endured through three days of trial a theme that my client is at fault.” ... “And you have a punitive damage option. The shareholder equity – this is in the report – is in 2010, 302 million dollars. Punitive damages are designed to deter. They’re not for Mr. Brim. They’re not for his lawyers. They are for everybody else. Those other 700 and – 7,999 folks who might have disputes or concerns. This is how you tell Midland in its offices, change your system.”*
2. **The summation for the jury from the Midland side** was based on convincing the jury that Midland doesn’t do anything different from everybody else, only taking a close look at 5% of 8,000 disputes a week is reasonable, that the plaintiff has to show that if they had in his case the outcome would have been different and that the blame for the actual outcome rests with him. What the defense did not point out is the actual fact of law that even if a reasonable investigation of the facts as they were available wouldn’t have shown an absolute answer, if they could not prove that the balance owed was actually owed and was actually accurate, Midland was required under the law to delete it from his credit reports. Midland attempts to claim that information from the original creditor was their deciding factor while at the same time admitting that Midland at no time sought information from the original creditor beyond what they already had and was being disputed.
3. **Bennett has final summation;**
 - a. **Pg 97, line 24;** *“Now, at the end of this, remember one last thing. Mr. Langley says computers are imperfect. (continued to next page), they’re evolving all the time. You have to debug them. Work them out. Well, have they? No. There’s no evidence that any procedures were changed; that if my client or his neighbor or anyone else in Alabama or anyone else in the country went through the same process today it would happen all the same.” ... “And that is why punitive damages are there. To deter companies from doing this same thing again and*

again and again. It doesn't have to be malicious, mean. It could just be reckless." ... "300 million dollars is what their annual report says. In excess of that. That's a lot of money. How do you make a 300-million –dollar company change its procedures? And obviously, suing them a year and whatever later isn't enough." "And that's where you come in. Not for Mr. Brim. That's not what punitive damages are for. You need to make sure that it doesn't happen in Alabama; doesn't happen in Virginia; doesn't happen in California or anywhere in the country this federal law governs. It's why the law has been there for 30-something years." (next page)... "We don't just need your help. Other consumers need your help. Make this policy different. If they don't want to do the detailed investigation, don't do it. But you can't keep reporting it as verified, definitely owed."

4. **Jury goes into deliberation;** while jury is deliberating Midland attempts to settle during a one hour lunch recess. After lunch the jury returns to the courtroom with their verdict.
 - a. **Pg 103, line 5;** Court- *"Is this your verdict: One the Plaintiff's claim against defendant for violation of the Fair Credit Reporting Act, we, the undersigned jurors, find in favor of the plaintiff." ... "Further, we, the undersigned jurors, assess the actual damages – well excuse me." "On the plaintiff's claim of willful noncompliance, we, the undersigned jurors, assess actual damages of the plaintiff at \$100,000."... "Two, we, the undersigned jurors, assess punitive damages in the amount of \$623, 180.".. "All right. And it's signed by you, Mr. Bess (jury foreman). And is there anyone who wants the jury polled?"*
 - b. **Mr. Langley** (Midland attny); *"Your Honor, we would like the jury polled."* All jurors affirmed the decision.
 - c. **Proceedings were concluded at approx.. 5:13 pm on February 25, 2011.**

OPINION OF THIS RESEARCHER:

It would seem that the jury was of the opinion that the current system whereby both the CRAs and the furnishers such as Midland rely solely on an inanimate machine receiving a code which triggers a computer algorithm instructing that machine to "check itself" and make a fact determination is NOT, by any stretch of the imagination, compliant with the requirements for investigation under the FCRA. By Midland's own statements in its annual reports its business model is based on cost efficiency and it is cost prohibitive to make any flesh and blood human effort to investigate more than 5% of the massive numbers of disputes they receive from consumers each year on accounts they pay less than 10 cents on the dollar for. The sheer number of disputes of all types is clear indication that Midland knows or should know that there is a healthy percentage of those accounts purchased which are perhaps paid off prior to sale, discharged in

bankruptcy, contain inaccurate amounts or identities, never existed or at the very least problematic in some other detail. Further, when taking a close look at the standard “As Is”, “No Warranty or Recourse” contracts associated with those purchased accounts, (*many are available online*) such as the one in this case there are no original creditor-consumer contracts obtained and therefore no possible legal authority for Midland to assess and charge to the consumer interest on the balance at sale of the account.

The practice of parking a trade line on a consumer’s credit file, tacking on continuing illegal interest to the balance month after month and demanding payment of amounts known to be false is not just a clear violation of the FCRA and the FDCPA but amounts to nothing less than extortion. Under the FCRA and FDCPA the consumer has no private right of action to pursue Midland for the criminal act of blackmail so therefore must rely on the provisions within the statutes which afford them their right to remedy under their own volition. Mr. Brim was such a consumer. Although Mr. Brim had excellent representation of counsel many consumers targeted by this unlawful and fully out of control collection industry do not. Most Americans are fully ignorant that Congress has provided statutes under which they can stand for their rights under the law and with or without counsel, hold the perpetrators accountable when those rights are violated.

The jury in this case awarded the maximum punitive damages allowed in an effort to dissuade Midland from the continuation of procedures and policies clearly in direct opposition to the plain language of the law. Other juries, indeed even states and federal regulatory agencies such as the FTC and the CFPB have done the same and for the same or similar reasons but alas to date, Midland and others of its ilk have steadfastly refused to amend their behavior in favor of their bottom line. Profit over law is the order of the day with these companies. If a company generates hundreds of millions even billions of dollars each year using tactics and policies contrary to law a mere few million dollars in fines spread out over the course of a lengthy pursuit for justice by a consumer amounts to nothing more problematic to them than a mosquito buzzing one’s ear at a summer picnic.

Even worse than the behavior of Midland in this case is the blatant admission of the CRAs that they “rely solely” on the furnisher to meet the requirements of investigation after formal dispute by a consumer. Until the 1996 amendments and subsequent 2003 amendments to the FCRA the burden of investigation fell solely on the CRAs. After the amendments the furnishers were “included” in that obligation under the law with their own clear and separate requirement of “reasonable investigation” provided under 15 U.S.C. § 1681s-2(b). However the greater burden of proof is and always has been on the CRA in regard to the information they are providing to third parties about consumers.

Although 1681s-2(a) does not afford a private right of action for consumers they are firmly held responsible under 1681i(a). If Courts and juries have determined that computers checking themselves, without any kind of human common sense interaction does not meet the standard of reasonable investigation for furnishers then ipso facto the CRAs obviously cannot simply rely on that clearly unreasonable noncompliance in order to meet their greater burden under the law.

In any event, nowhere in the Fair Credit Reporting Act did Congress impart that ANY of the burden of reasonable investigation should fall on or be shifted to, the consumer. It is not the responsibility of the consumer to prove a negative when disputing harmful information being published and shared with third parties about them. The responsibility of the consumer is simply to speak up, (*formally dispute*) with the CRAs and furnishers, and give them AN OPPORTUNITY to correct the error(s). The consumer is not expected to give numerous or multiple opportunities, knock their heads against a proverbial wall and stress over the issue for months and years; only to find themselves faced with only one choice to solve the problem after being ignored or being told they will have to prove something to the perpetrators first. That choice is to file suit in federal court. Congress passed the FCRA statute in 1970 in an effort to circumvent the foreseeable abuses to consumers presented by the rapidly growing use of computer technology and the inevitable practice of relying solely on inanimate machinations to eliminate human responsibility, common sense and cognitive thought. The law does not exist to limit the behavior of computers; it exists to limit the abuses rendered by humans against other humans. Is it possible for a computer hacker after hacking the United States Treasury data bases to rely on a defense of, "well I didn't do it the computer did"? Probably not so why on earth are these CRAs and furnishers getting away with that very defense so often? The E-Oscar system does not provide compliance with the law and indeed was not designed to do so. The E-Oscar system was designed to turn an obligation under the law that may be cost burdensome to the companies and their shareholders into a very cost efficient detour AROUND THE LAW.