

TRESSLER PARTNER JAMES BORCIA WINS BOTH FACTA CASES TRIED TO DATE IN THE UNITED STATES: JURY FINDS DEFENDANT DID NOT WILLFULLY OR RECKLESSLY VIOLATE FACTA

Tressler LLP partner James K. Borcia defended the case.



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In *Velasco v. Sogro, Inc.* (No. 08-CV-244-CNC), the U.S. District Court for the Eastern District of Wisconsin, found the defendant, Sogro, Inc., did not willfully or recklessly violate the Fair and Accurate Credit Transactions Act (FACTA). This case is only the second FACTA case to go to trial in the United States. Both cases were tried successfully by Tressler partner, James K. Borcia.

This case involved the defense of a class action lawsuit for violations of the Fair Credit Reporting Act (FCRA), as amended by the Fair and Accurate Credit Transactions Act of 2003 (FACTA). Tressler represented the defendant, Sogro, Inc., a company that operates a motel in Lake Geneva, Wisconsin.

Sogro provided receipts with full credit card numbers and expiration dates to its customers after FACTA was enacted. FACTA requires only truncated receipts showing the last five digits and no expiration date be given to customers. The lawsuit, filed in March 2008, sought statutory damages of \$100 to \$1,000 per occurrence. The court certified a class of all persons receiving a receipt from the motel after December 2006, which amounted to more than 1,000 individuals.

The plaintiff introduced evidence of notices sent by credit card companies, Sogro's credit card processor and trade associations advising of FACTA's truncation requirements, and argued that there was abundant and uncontested evidence that Sogro recklessly violated FACTA, which was sufficient for the recovery of statutory damages.

In late February 2015, after successfully fending off the plaintiff's motion for summary judgment, the case was tried to a jury in federal court in Milwaukee. The jury was successfully convinced that Sogro did not willfully or recklessly violate FACTA, and a judgment was entered in favor of Tressler's client.

Tressler Comments

Businesses need to be mindful to protect their patrons' personal credit card information at the point of sale pursuant to the Fair and Accurate Credit Transactions Act. However, as demonstrated in this case, the burden of proof falls on the plaintiff to prove a willful violation of FACTA.

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