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Defeating Consumer Fraud Class Actions Before Discovery

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Consumer fraud class actions are costly to defend because they typically involve multiple plaintiffs, expensive discovery, and high financial and reputational stakes.

To help corporate defendants avoid long and onerous litigation, we review in every matter a strategy for an early “up-front” result. One effective approach is to move to strike the class allegations at the pleading stage, a powerful and often overlooked weapon in a defendant’s arsenal. While not all courts favor this type of motion, an early motion to strike is allowed in states such as Illinois, where the courts require “fact pleading” – meaning that a complaint must allege specific class-wide facts establishing commonality, predominance and other essential elements for class certification. And, even under the more liberal federal notice pleading standards, a motion to strike may be granted where defects in class certification are plain enough from the pleadings. See, e.g., *Lee v. Children’s Place Retail Stores, Inc.*, No. 14 C 3258 (N.D. Ill. Oct. 8, 2014).

Another up front approach is to attack standing, a defense that may not at first glance be obvious. For example, a plaintiff’s prior bankruptcy filings can have fatal effects on jurisdiction, standing, and the ability to certify a consumer class. Our attack on standing proved effective in defeating a recent Illinois consumer fraud class action when the named plaintiffs’ prior bankruptcies were fatal to their claims. Although the plaintiffs had not alleged their earlier bankruptcies, a public records search allowed us to bring the facts to the court’s attention at the pleading stage, leading to affirmation of dismissal with prejudice. See *DeWeese v. Stratford*, 2014 IL App (1st) 140074 (Sept. 30, 2014).

Taking aggressive early steps to nip class-action litigation in the bud before any discovery begins will have some short-term expense, but ultimately should save substantial time and cost of litigation through an early final judgment in the client’s favor.