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Titan Of The Plaintiffs Bar: Jim Francis

By **Allison Grande**

Law360, New York (October 03, 2014, 2:01 PM ET) -- When he returned to campus for his senior year of college, Jim Francis discovered that mail forwarding had failed, leaving him with a bill that was long overdue. His subsequent struggle to remove the blemish from his credit report spurred him to create a consumer litigation practice that has been racking up groundbreaking decisions in fair credit reporting law for nearly two decades.

Since launching Philadelphia-based [Francis & Mailman PC](#) with a close friend and former classmate in 1998, Francis has played a vital role in shaping case law under the Fair Credit Reporting Act and similar consumer protection statutes. He and the firm have taken on — and won — several pivotal cases of first impression involving consumers' right to access and correct data that could have an impact on their ability to obtain credit, employment, housing and other services.

“I first encountered Jim about 15 years ago when the area was relatively new, and he and his firm have really been out there constantly pushing the envelope with new legal theories in terms of what the law permits,” said Richard Perr, a partner at the defense firm [Fineman Krekstein & Harris PC](#). “The consumer litigation industry in this area is where it is, in large part, due to Jim Francis.”

The damaging mail-forwarding error that led Francis to become an FCRA trailblazer came at the beginning of his senior year at Muhlenberg College. At the end of his junior year, Francis had asked that any mail that came for him during summer break be forwarded to his home address. But when he returned for the start of his senior year, he discovered an unpaid bill sitting in his mailbox, which was by that time 120 days late.

“I wrote a nice letter to the credit reporting agency disputing the missed payment being put on my credit report and explaining that mail forwarding hadn't worked, but the agency didn't do anything at all,” Francis recalled in a recent interview. “The mark stayed on my credit report for seven years, and it infuriated me.”

The experience proved to be influential several years later, when Francis and Mark Mailman — who



Jim Francis

attended both college and law school together — were deciding which area of consumer law they should focus on in their fledgling legal practice.

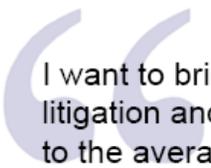
“When we went out on our own to start a practice, I remembered this issue and remembered my realization during the dispute process that no one was handling these types of cases,” Francis said.

Consumer advocacy has always been a top priority for Francis, who after graduating from Temple University Beasley School of Law in 1995 worked at plaintiffs firm [Kolsby Gordon Robin Shore & Rothweiler](#) before branching out on his own.

“In the area of consumer rights, there is a big need for lawyers because consumer rights are often being trampled on and being given very little attention, while corporate defendants have plenty of talent to choose from in terms of representation,” Francis said. “I want to bring the same quality of litigation and attorney work-product to the average consumer as is afforded to corporate defendants. I want to help level the playing field.”

While Francis had focused primarily on catastrophic injury litigation during his time at Kolsby Gordon, he and Mailman knew in launching their own firm that they wanted to take a different — and less worn — approach.

“When we started talking about going out on our own, we knew we wanted to go out into a new area because we felt that areas like personal injury and medical malpractice were already saturated with plaintiffs attorneys,” Mailman said. “We’ve always liked David-and-Goliath situations, and we wanted to focus on a statute with a fee-shifting provision that would allow us to help consumers fight these types of battles for free.”



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So the duo zeroed in on the FCRA and the Fair Debt Collection Practices Act, which both permit a prevailing party to recover the costs of the action and reasonable attorneys' fees while allowing the attorneys to accomplish what Francis described as his motivating desire to “do something productive and positive for people.”

“If I didn't have that propelling me, I'm not sure I'd still be doing this to the degree I am,” Francis said.

When Francis and Mailman first jumped into FCRA and FDCPA litigation in 1998, they were in relatively uncharted waters, allowing them to pursue novel and untested theories in their efforts to create broader coverage for consumers with credit reporting and debt collection dilemmas.

Francis' work has resulted in several groundbreaking decisions, including the Third Circuit's precedential ruling in the 2010 case *Cortez v. Trans Union LLC*, which outlined the liability, causation and damages standards for FCRA cases against credit reporting agencies.

One of Francis' first major victories came in another case against Trans Union, in which the Eastern District of Pennsylvania ruled in 2003 that credit reporting agencies that merely parrot information from credit furnishers and fail to forward dispute documentation can face claims for punitive damages

under the FCRA.

Francis and his colleagues have also secured several significant settlements during the past two decades, including a \$28.3 million national settlement achieved in 2011 for a class of consumers who had sued Hireright Solutions Inc. in the Eastern District of Virginia over employment background checks, a deal that is believed to be the third-largest FCRA settlement in history.

The firm, which now has eight attorneys on staff, also reached a settlement with [LexisNexis Risk & Analytics Group Inc.](#) in 2012 that required the company to pay \$13.5 million and overhaul its Accurint background search product to settle nationwide class action claims that it sold reports to debt collectors without following the FCRA.

“One of the things that Jim has done really well is that he's a tenacious litigator, but he's also widely perceived as reasonable and willing to work with everyone,” Mailman said. “Adversaries as well as local counsel really trust his integrity.”

Perr described Francis as a “very likeable guy with a really good demeanor who knows his facts and knows the law, and is prepared but in a very colloquial way.”

“We know that when we're dealing with his law firm that we're going to have our work cut out for us, because the facts will be well-pled and the legal arguments will have been well-researched,” Perr added.

Even if they can't hammer out a deal, Perr said that Francis is always willing to engage in a discussion at the outset of litigation and, importantly, is open to dropping a dispute if the facts don't pan out exactly as Francis' firm thought they would when filing the suit.

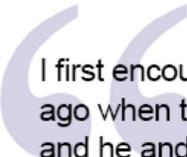
“It's always great to work with someone like that [who] does the right thing either way, whether it's positive or if it doesn't work out,” Perr said.

Attorneys on the same side of the bar have also noticed Francis' work ethic.

“He's extremely bright, super-sharp, picks up on the issues and arguments instantly and comes up with smart responses on a dime,” said Alan M. Feldman, co-managing partner of Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig LLP.

Feldman recalled that Francis recently volunteered to prepare a brief requested by the court when the two were working together on an automotive defect class action against [Kia Motors Corp.](#) in New Jersey. He quickly produced “a terrific piece of writing,” Feldman said.

Francis' linguistic skills and ability to relate to his colleagues can likely be attributed at least in part to his undergraduate experience.



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While Francis entered Muhlenberg on the pre-med track, he quickly discovered that “I couldn't stand it and decided, like many people that age do, I was just going to do whatever I wanted to do.”

The decision led to Francis majoring in English and theater, which both Francis and his colleagues say has been beneficial to his legal career.

“His majors have helped him to have a good presence before judges, have a great command of the English language and to be able to communicate,” said Mailman, who noted that one of the first things that struck him upon meeting Francis in college was his curiosity and how he “always questioned everything.”

Francis said that one of the keys to his success has been his persistence, a quality that he also finds useful during the runs he takes the morning of a big case or trial.

For the outdoor enthusiast — who is currently training to run his first half-marathon in Philadelphia in November and recently returned from an annual “guy's trip” that this year involved mountain-climbing in Peru — the physical activity allows him to clear his head and focus on what's ahead of him.

“One of the best pieces of advice that I've received is that, 'persistence pays off,’” he said. “Whether it's learning a new profession or trade or setting out for a run, you're probably going to have a lot of trial-and-error and failure, but if you allow failure or setbacks to define and distract you, you're not going to go very far.”

--Editing by Philip Shea.

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