

Emerging Issues in Civil Litigation and Regulatory Actions

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Potential Litigants

- Consumers
- Card issuing banks
- Shareholders
- Business partners
- Insurers

Consumer Claims

- Typically brought as class actions
- Potential claims:
 - Violation of notification laws
 - Violation of consumer protection laws
 - Breach of contract
 - Breach of implied contract
 - Negligence

Article III Standing

- Injury must be:
 - Concrete and particularized
 - Actual or imminent, not conjectural or hypothetical.
- Plaintiffs “cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.”
Clapper v. Amnesty International USA

Frequently Alleged Injuries

- Increased risk of identity theft or fraud
- Cost of mitigation
- Time and inconvenience
- Denied benefit of the bargain
- Loss of value of PII
- Statutory harm

Card Issuing Bank Claims

- Negligence
- Negligent misrepresentation
- Breach of contract
- Breach of implied contract
- Deceptive practices acts

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