

June 14, 2005

**By fax (717-787-1788) and regular mail**

Barry N. Kramer, Esquire  
Deputy General Counsel  
Governor's Office of General Counsel  
333 Market Street, 17<sup>th</sup> floor  
Harrisburg, PA 17101

Re: Settlement of criminal identity theft matter

Dear Barry:

As you know, Community Legal Services, Inc. ("CLS"), Schnader, Harrison, Segal and Lewis, and Professor Seth Kreimer (together, "co-counsel") were prepared to file litigation several months ago against the Pennsylvania State Police ("the PSP") for its practices around maintaining and disseminating criminal history records on victims of criminal identity theft. We decided not to file suit at that time based on our negotiations with you concerning the PSP's commitment to remedy the problems faced by our clients. This letter confirms the terms of our negotiations. Issues that are not yet completely resolved are indicated in italics.

1. **Technical solution for non-criminal justice agency requests to the Central Repository:** The PSP agreed to develop and implement a technological solution that will result in dissemination to non-criminal justice requesters of accurate criminal history reports for criminal identity theft victims. "Criminal identity theft victims" are those who have been verified by fingerprint comparison by the PSP. The new software will make it possible for PATCH system users to immediately obtain accurate records for criminal identity theft victims. This solution is described in a PowerPoint presentation prepared by the PSP, entitled "PSP Proposed Technical Solution for Fraudulent Identification Processing" and dated April 5, 2005. Steps towards implementation of the technical solution are underway. The anticipated time frame for implementation of the technical solution is September or October, 2005.
2. **Solution for criminal justice agency requests:** We agreed that we will identify a method for avoiding the detention of criminal identity theft victims on information from the criminal history record of the identity thief, particularly on open bench warrants. Initially, you described a system for flagging criminal history data in the Central Repository for which identity theft had been proven. However, I later learned of the recently implemented NCIC

identity theft file, which ought to resolve the bench warrant problem. The PSP's procedures for identity theft corrections should be coordinated with the NCIC procedures. *You are looking into the new NCIC procedure, and we have not yet resolved this issue other than in principle.*

3. **Interim relief:** The PSP has agreed to provide some combination of the following options to verify the correct criminal records for the five would-be plaintiffs and other criminal identity theft victims:

- a. PSP will provide a certified criminal record;
- b. An employer or other requester may call Lt. Nancy Shaheen or you;
- c. Lt. Shaheen or you would call an employer or other requester; and/or
- d. Lt. Shaheen or you would send a personalized letter to an employer or other requester.

4. **Identification of other criminal identity theft victims:** The PSP has no records of the persons to whom it has issued the PSP identity theft letters. The criminal identity theft victims must be identified before their records can be flagged. Therefore, the following steps will be taken to identify the victims.

- a. The PSP is keeping track of letters that are newly issued and letters that are submitted with criminal history record requests.
- b. Co-counsel will provide the PSP with a list of criminal identity theft victims known to them.
- c. Co-counsel will encourage media coverage of the criminal identity theft problem so that more criminal identity theft victims self-identify.

5. **Language issues:**

- a. We have agreed on language that will be used whenever the PATCH system provides a "no record" response, as follows:

"Individual has no criminal record in the PSP central repository based on Name, Date of Birth, and Social Security Number provided. Before you rely on this response, please confirm that the identifiers are correct. Positive identification cannot be made without fingerprints."

- b. We will agree on the contents of a new PSP identity theft letter. *This agreement would be premature at this time, as the contents are not yet certain pending resolution of the law enforcement background checks procedures.*
- 6. **Dissemination reports:** Co-counsel requested the lists of recipients of criminal history records from the PSP for the plaintiffs and class members. *This issue has not yet been resolved.*
- 7. **Education of PSP staff about the new criminal identity theft protocols:** We have agreement in principle that this step will be taken. *The nature and contents of the communication remain to be resolved; the possibility of a "Special Order" was discussed.*

Should you disagree with this characterization of our agreement, please let me know as soon as possible.

We appreciate the PSP and your efforts towards resolving this matter.

Very truly yours,

SMD

SHARON M. DIETRICH  
Managing Attorney

cc: Co-counsel