

Consumer Financial Services Litigation Series (Episode 1): Pro Se Plaintiffs

Speakers: Joseph Schuster and Matt Morr

Joseph Schuster:

Hello, and welcome to the Ballard Spahr Consumer Finance podcast. I'm Joseph Schuster, a partner at Ballard Spahr in our Consumer Financial Services group. I spend much of my time advising financial institutions and other companies on consumer finance issues, including litigation, enforcement matters, and regulatory risks that come to them.

I'm joined today by my colleague Matt Morr, and we're going to talk about something that we're both seeing more of, how artificial intelligence is starting to change the economics of single plaintiff litigation. On the plaintiff's side, AI can make it much easier and less expensive to take a relatively straightforward claim and develop a much more comprehensive complaint, one that identifies more potential causes of action, better connects the facts to the elements of those claims, and anticipates some of the arguments a defendant might otherwise raise in a motion to dismiss.

But this is not just the plaintiff's story. The same technology can help defendants and law firms assess cases faster, organize a factual record, identify defenses, manage discovery, and ultimately handle litigation much more effectively and efficiently.

So Matt and I are going to talk about what is changing, what it may mean for motions to dismiss and litigation strategy. Some ethics considerations with respect to artificial intelligence, and also how both sides are thinking about and going to adopt as the tools become more and more capable.

Matt, before we jump into the topic, why don't I turn it over to you to introduce yourself and tell our listeners a little bit about your practice?

Matt Morr:

Thanks, Joseph. Again, my name's Matt Morr. I'm a litigator in the Ballard's Denver office. I primarily do consumer finance litigation, and that's anywhere from defending large TCPA class actions to individual credit card disputes in arbitration. And over the last year, my practice has changed significantly with respect to defending pro se complaints because of their use of AI. And this is coming at the same time that we at Ballard are really leveraging our use of AI and using it for all facets of the case.

And in particular, one of the most useful times is at the beginning of the case to plug it into one of our AI systems and to get a very quick analysis of the complaint, potential motions to dismiss, and the type of things that we'd want to pursue in discovery.

What we are seeing is that plaintiffs, pro se plaintiffs in particular, are also using AI. And so where we might have seen in the past a handwritten complaint that just says "breach of contract" and doesn't provide any information, we are now seeing very long complaints that's generated by AI, oftentimes with completely irrelevant information that the pro se plaintiff is able to develop in a matter of minutes and submit to the court.

And like everyone, this is new. It's new for the defense lawyers, it's also new for the judges. Who I just had lunch with a judge and she commented on how frustrating it was because she is getting flooded with pro se filings that are generated by AI. In a short amount of time, we have developed strategies to deal with these AI pro se plaintiffs, and we'd like to talk a little bit more about those today.

Joseph Schuster:

Thanks, Matt. I will add just as I set the topic that we're going to talk about during this podcast that as a result of AI, like Matt was saying, it is leading to significant growth, like that judge said in consumer litigation in particular, I would say. There are statistics out there that talk about some of the increases in various consumer finance laws that are being filed, like the Fair Credit Reporting Act. Claims are up over 40% this year versus last year. The Fair Debt Collection Practices Act, the Telephone Consumer Protection Act also up significantly this year over last year.

Like Matt was saying, what we're seeing with the use of AI is that it's lowering the cost of producing a complaint that has more information in it. I would say, and it's for the pro se litigants, but also single plaintiff, even when a law firm is involved on the plaintiff's side. I think that where historically you had to have substantial attorney time to review the record, develop the chronology, identify those possible causes of action, researching the elements of all of that, like Matt was saying, the complaints now have a lot more causes of action. The factual record that's developed is much more comprehensive and it is anticipating defenses and motion to dismiss arguments.

AI is now accelerating all of that. We are seeing specific platforms being developed for plaintiff side firms. And as Matt was saying, pro se litigants are using generally available large language models to develop complaints as well. So it's a very large shift, I'd say, and it's leading to a much larger volume of single plaintiff litigation. Where a person may have had an issue with a financial institution or others and they might've resolved it by contacting the call center previously, now they're able to very easily generate a complaint. They can find out the rules for filing that complaint. All those elements are much more accessible for people.

Matt, I'd ask if there's anything you want to add there, but then I'm curious if you could touch on whether we're seeing this make complaints more difficult to dismiss or what the impact is of this.

Matt Morr:

So to that point, one of the things that the pro se plaintiffs are able to do is get AI to generate timelines which help make their complaints more easy to follow, and also use AI to digest a whole lot of information. So for example, in Fair Credit Reporting Act claims or the Fair Credit Billing Act claims, we're seeing that the pro se plaintiffs are loading in their statements and communications with the financial institution and then asking the AI to analyze it. One important thing to remember though is that they're just using public-based AI, not necessarily ones with some of the legal training that the proprietary AIs have an advantage with. And so they're not always right. And so they are able to present better complaints, but they still suffer from both the plaintiff's biases where the AI wants to provide something that pleases the person using it and AI not necessarily being able to distinguish with what is important.

And so when we are getting these complaints, what's important is we both use our tools, our AI tools, to analyze the complaints and then have our seasoned lawyers look at it and say, "Is this really addressing what's important? Or does this contain a bunch of red herrings that was produced by AI?" And so in some ways it is better, but there are still avenues to attack and try to file a motion to dismiss on these kind of claims. The key is really doing the upfront work in figuring out what's really going on in the case and not just accepting, "Hey, this looks like a professionally done complaint and it has these claims and some elements," but peeling a little back on the onion and really getting into what's going on in the case.

Joseph Schuster:

It's a really good point, Matt. I'll tell you in preparing for this podcast, I found a recent working paper that looked at roughly 2.8 million federal civil filings. And it found that pro se plaintiff's rate increased over 10%, but it says 11.33%. I'm sorry, that's what it was before widespread generative AI was available, it's 16.94% afterwards. So there was that rise, but interestingly, this white paper, so it's very much a working paper. So the results I think are still being developed, but it found that the complaints were more citation dense for first time filers, but that there was not necessarily an improved win rate with respect to those, which is interesting.

So we are seeing much more involved complaints, but that does not necessarily mean that they are going to be things that defendants cannot address. Now, I think this moves us into a little bit of how we and others who are defending against some of these complaints are then able to use AI in some of these instances. I think that, and there's some great resources out on our website that talks about some different things that we've been implementing over the past couple of years with this. And I think that it goes to some of the things are kind of corollaries to what, Matt, you're saying about how plaintiffs are using it, that we're using AI in some of those similar ways.

To do that first pass case assessment, put together the chronology, the allegation by allegation, factual map, the claim element matrix that we have, identifying if there's missing records. It can even put together potential defenses that we have. And some of the great things I think when we're using it internally, especially when we're defending the same clients against multiple

claims, is recognizing prior litigation involving maybe that firm, that counsel, and looking at if this is the 47th claim, there's a variation on a theme and what the factual differences are.

With the increase, I think that using some of these tools are going to be extremely important. But Matt, I'm curious if you have thoughts on the tools that we're using or if you think that AI for pro se plaintiffs, it really changes how you think about the motion to dismiss strategy or anything else?

Matt Morr:

Well, you raised a great point in your description of the increase in filings in federal court that they contain more citations. And that is actually a way that we can use our AI and do a jujitsu move and turn it against these pro se plaintiffs. So in a normal complaint written by a lawyer, there's very rarely reference to citations of cases. Because a complaint under Rule 8 is supposed to be a short and plain statement. One of the tells that somebody is using AI is there is always, not always, but very often a legal argument that you would more likely see in a brief instead of a complaint.

And one of the most important things to do when dealing with these pro se complaints is checking to see if those citations in the legal argument are real. Just as often as not, they are phantom citations or they're cited for a proposition that they do not stand for. So the case says that the light was green and the pro se plaintiff says you need to look at this case because it says the light was red. And one of the best moves is if we can find that they have used AI and have cited a phantom case or made a false assertion about what a case stands for. Is that we can then immediately take that to the court and remind the court that the pro se status does not eliminate their obligation to verify that their pleadings are accurate.

It does not eliminate their obligation to investigate to make sure that what they're saying is reasonable. And so whether it's in a motion to dismiss or what we've done on some occasions is file motions to strike, where we point out very concisely and directly to the judge that what this person is telling you is false from the get-go and it shouldn't be considered. You should order them to show cause as to why they shouldn't be sanctioned or why the case should not be dismissed. And we've seen instances where the courts, who there's already not enough judges, are getting tired of being flooded with these pro se complaints and they're coming down hard on some of these pro se plaintiffs. And so that's one strategy right there is to check if they're making legal arguments that aren't supported because judges won't appreciate it.

The other piece is that goes to the AI they're using likes to please the user. They will often see that there's some fudging with respect to what documents say or don't say. Or very selective in what they are referring to in the timeline of events. We can then use our AI to put in the documents to analyze each paragraph and to see if there's points that we can attack at the outset, both from a fact standpoint and on whether they've stated a claim to try and get an early dismissal.

And in some ways it can become a battle of the AI, but we've got two advantages. The folks on our end reading the AI are experienced lawyers that are able to cut through some of the nonsense or things that doesn't matter, and we have better tools that are going to be able to access our legal databases and do a better job of finding and distinguishing cases.

Joseph Schuster:

It's interesting. I'd say too that these tools I think can also help identify where there's a legitimate issue or something within the complaint that perhaps the defendant would like to try to resolve, that a person has been reaching out with something and maybe not gotten through to the right person. So this is where we have tools and we do this for a number of clients that it can really do that first pass, that case assessment that Matt was talking about, that I was talking about as well. That can represent all of those items, but still it can go then to our client to share that maybe there was something that the client can resolve for a lesser amount than what would've otherwise been spent on having lawyers analyze that claim.

So it is something that there is the increased number of complaints being filed. We do have the tools when we need to fight those, but it also provides us with tools to identify without too much expense early on where there are complaints being filed that can be addressed much more easily. It's very interesting in that in some senses, AI is almost democratizing the ability to file complaints, I'd say. But the institutions who are using this and adopting the technologies as well as they come out and in working with law firms who are doing that are able to really institutionalize it. So that you can see where there are, let's say, plaintiff's firms who are filing the same case over and over again and how we can address that with different facts maybe.

Versus those pro se litigants where we can figure out if there's something there early on before spending a lot of money with respect to attorney's time that our client or the defendant might be more inclined to address the individual's issue.

Matt Morr:

We are fortunate in that we have lots of great clients that want to do the right thing. Business are ran through people and people on occasion make mistakes. And sometimes those mistakes are actually hard to find. So if you've got a Fair Credit Reporting Act case or an FDCPA case where you're looking at a long history of interactions with this pro se plaintiff, using the AI tools to look at the documents, summarize the communications may quickly reveal that screw up, accidental of course, early on. And it may give a route to a quicker resolution where you can say, "Okay, this did not go perfectly. This plaintiff is not entitled to win the lottery, but let's put our efforts at the outset to trying to get this settled."

You made another great point, which is that the use of AI by pro se plaintiffs can even the playing field a little bit. And what we saw recently in a District of Colorado case is a judge describing AI as the equalizer for pro se plaintiffs that are navigating complex litigation.

Joseph Schuster:

Yeah, I think that's exactly right now, and it is an equalizer in that sense. And I would say too that clients are, I'm going to say increasingly expecting, I might even say expecting their law firms to be using AI to reduce costs and improve efficiency. Improve consistency as well so that as we work with a number of associates on different things, AI can identify differences so that we are consistent with how we're responding to things. Clients want us to have consistency. They have specific ways that they want to be responding to complaints as well, and we're able to do that much more efficiently. You're not responding to a complaint here in 2026, you're using technology or a completely manual process like you might have been in 2019.

We're seeing that. We have AI that we're deploying across the litigation life cycle. We have a great slide deck that outlines that. But I think it's really an opportunity where attorney time is moving away from, I'm going to call it lower value processing time, more towards judgment, strategy, witness preparation, the negotiation, the advocacy pieces of it where I think attorneys can add real value. Now with that, Matt, I think it's worthwhile to touch on some of the risks of AI as we think about it from the law firm sense. Do you want to start with a few of those?

Matt Morr:

Well, certainly depending on what product you have, the biggest risk I view is if your AI produces the phantom cases. And we've recently seen some federal court of appeals cases where lawyers have been called out in oral argument. A recent case where one side cited a number of phantom cases and said that the standard of review was X. And oral arguments started, the panel of judges immediately said, "You said this was the standard of review. It didn't sound right to us. We then went and looked for these cases and they don't exist. And not only that, it's the wrong standard of review."

But then on top of that, when the next attorney got up to present his side of the argument, the judges said, "We want to talk to you about not flagging this for us." And the judges made it clear that they were just as mad at the lawyer on the other side of the phantom AI for not pointing it out to them because they had to spend their time going and looking when they said, "Look, they cited the wrong standard, they cited fake cases. Our expectation of you counselor is that being diligent, you will alert us to those type of problems."

And just like a pro se plaintiff, outside counsel still has the obligation to review and verify and make reasonable investigations of anything that they're saying in pleadings. And so the real danger is that folks get lazy and stop double-checking, stop reviewing cases and show up to court and it turns out something that was said in their papers was incorrect. For me, the way I'm using AI on a day-to-day basis, and I'll take a step back and think back to when I was a first or second year associate, and we joked that Westlaw or Lexis was our screensaver because we were constantly on one of those platforms doing research.

Well, now I have two screens. On one screen, I always have my AI up and I use it as actually an extra associate where I'm asking it questions, I'm using it to help me quickly draft things or summarize things. But the important piece is like you need to do with a young associate, you've got to double-check and you've got to make sure it's right. It's a little bit extra time, but

you're still saving a ton of time in the long run for what it's able to generate very quickly. And that comes with both what AI is saying about the law and what AI is saying about the facts.

Joseph Schuster:

And I think Matt, and you correct me if I'm wrong here, but I think that Colorado was, actually where we're both located, was one of the first jurisdictions I think earlier this year, earlier in 2026, where they added AI specific language to the professional conduct rules to reinforce. Like Matt was saying, that technology does not reduce the lawyer's professional responsibilities and the judgment remains the responsibility of the lawyer. So as I think about it's really that AI changes the work that we're performing. It allows more of that strategy, the analysis piece, but it does not change who is responsible for the work.

I should add too that the AI tools that we use, and this is very important from a professional responsibility confidentiality perspective too, all of our tools are closed loop that when data goes into them, it stays within the firm itself. It's not used to train AI or anything of that nature. The hallucinations aspect of it too is something that really needs to be a consideration, how that is being assessed. That if something goes to the court that is incorrect, that is the responsibility of the lawyer. I like to think of these hallucinations of, well, Matt, you have two kids. If you're like, "Hey, did you make your bed this morning?" And they're like, "Yes, I made my bed." And then you're like, "No, your bed's not made." And they're like, "Oh, upon second review, you're right. I didn't make my bed." That doesn't work.

But if you try to delegate the responsibility for these AI tools, that's essentially what you're trying to do. I do think though that there is an expectation that these tools are being used, but our clients are expecting it. I think just as we see the rise in litigation, it's something that's necessary. It's also that clients are expecting that we're passing those efficiencies along, and we certainly are because it allows for more of that strategic work, the analysis, really where attorneys can add value for our clients. But Matt, anything else you'd add otherwise, I think that it'd probably be worthwhile to end on a few predictions that we see with respect to AI.

Matt Morr:

Well, before we go to that, there's two other items I want to talk about. One is as we talk about protections, there's also the question of whether AI use is protected by work product. And so for lawyers using AI services, I think we have a very strong argument that those are our mental impressions and they're protected by work product. I always have the fear that, for example, a C-suite executive prior to any litigation starting goes on to ChatGPT or Claude and says, "I'm thinking about doing this under a contract. Is it a breach?" And that could potentially be discoverable. On the same token, in these pro se cases, one of the things that I've tried to get at in discovery is asking for their conversations with AI because they're pro se, and that being the argument that it shouldn't be protected by the work product doctrine.

It is an open question. Here in Colorado, recently, a magistrate judge issued a ruling that said that rule 26 which governs work product, can be extended to AI-assisted litigation work product, and it's not necessarily limited to attorneys and can apply to pro se litigants that are using AI in litigation preparation. Now, that's not an automatic waiver. There's still questions that the court needs to look at, and the court did, and I don't necessarily agree, but rejected the argument that just merely providing information to an AI platform destroys confidentiality because a third party service processes the data.

This is still an emerging area of law. I would take the other position that if you're plugging something into ChatGPT where it's generative AI and what you're asking it is going to be used later to answer someone else's question, that there is no expectation of confidentiality, and so there should be a waiver. Now, that cuts both ways. I like that argument when I'm trying to get at what the pro se plaintiff is doing. I don't like it when it's the example I provided earlier of the CEO considering making a business move and us having to deal with that in discovery. And so I think what we're going to find as time goes on is that courts will start issuing orders, protective orders and standard orders related to AI and what is fair game for discovery and what is not. That will certainly be a subject of an upcoming podcast as this area of law further develops.

The second is we are seeing very recently non-lawyers using AI to provide services to people in lawsuits or in their negotiations with financial institutions. So the scenario is Bob is having an argument with his bank about a charge on his credit card, and he hires this third party company that is not lawyers, not a law firm, to be his agent. And then the "agent" uses AI to both fight with the bank and even eventually sometimes we've seen AI used to file complaints and respond to complaints with the AI being really who is running the show.

This is new. We have serious concerns that the folks running these kinds of companies are practicing law without a license and plan on aggressively pointing that out to courts when we're able to discover that's what's going on. And so another area of inquiry if a case gets to discovery is are they using one of these services? And if so, trying to discover what's going on. As it relates to privilege and work product. Certainly I think you'd have a strong argument that they don't get those protections because these kind of companies are saying, "We're not attorneys, we are not practicing law. We are just willing to act as your agent and make arguments on your behalf, which sounds an awful lot like being an attorney."

And I think that we will be able to nip this one in the bud, but it's something for folks to watch out for and to explore in their defenses of cases.

Joseph Schuster:

It's also going to be an interesting one to see where the bodies that govern attorneys are going to go with this as well. The American Bar Association, as well as state bodies that are responsible for attorney ethics. As we start to close this out a little bit, I'd say thinking about predictions for where this is going, I think a lot of it is just going to continue to accelerate what we're seeing here. I think that AI is going to increase the number... Now we've been talking about pro se plaintiffs primarily, but I'm going to say that it's also going to increase the number of economically viable individual cases that are not pro se as well when plaintiff's firms are able to ingest factual patterns much more and where there may have been a desire for a class action because of the scale that it provides. That will still exist, but it will also make individual cases much more economically viable.

Curious, Matt, your views on that and predictions that you have as well.

Matt Morr:

I agree completely. We already see the class action plaintiff's bar recycles what everyone else is doing. So regardless of who the class action plaintiff is, their TCPA class action complaints generally look very similar and have a lot of the same run up in fact patterns. Same with the Fair Credit Reporting Act. And then what they're doing now is plugging in just a couple facts related to their individual plaintiff. I think that the worry is that plaintiffs will be able to scale this even more using AI, both to identify potential class representatives and use it to try and certify classes. And so it's very important that we essentially are fighting fire with fire and using all the technology we have at our disposal to keep the advantages that we already have.

Joseph Schuster:

So I'd say in terms of closing thoughts, AI is making litigation easier to generate, is what you're hearing. But with that, the competitive advantage is going to belong to lawyers who are making that litigation easier to understand and resolve. And I think that the tools can be used in that way.

Matt Morr:

I agree. And the other advantage that we have and we need to take advantage of with respect to pro se plaintiffs is that when we are able to get in front of the judge, whether it's over Zoom or in person, being able to come across credible, understanding what the arguments really are, and making it clear that the pro se plaintiff is regurgitating something that they've got from Claude or ChatGPT and redirecting, reframing and getting the judge to understand what the real issues are and why, we win.

Joseph Schuster:

Yeah, I think that's right. With that, I think that's where this stands right now. It's going to be very interesting, I'd say to refresh this in six months, 12 months. It is technology that continues to evolve very rapidly on both sides, on the plaintiff's side and on the defense side. So thank you for tuning into this podcast.

Matt Morr:

Thank you everyone.