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U.S. Supreme Court Issues Its Much-Anticipated Ruling in *Spokeo*

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Class Action Litigation

In a decision closely watched by businesses that are the targets of consumer class action lawsuits, the U.S. Supreme Court confirmed that a plaintiff asserting a statutory claim must make a showing of particularized and concrete harm sufficient to establish Article III standing, even if the underlying statute provides for statutory damages without a separate showing of injury. However, the Court sidestepped the ultimate question in the case before it, remanding the case to the Ninth Circuit to consider in the first instance whether the plaintiff had suffered any concrete harm.

The Court's Opinions

In *Spokeo, Inc. v. Robins*, the plaintiff filed a class action lawsuit accusing Spokeo (a company that aggregates publicly available information about individuals) of violating the Fair Credit Reporting Act ("FCRA") because, he claimed, Spokeo's results provided inaccurate information about him. The district court dismissed the complaint because the plaintiff failed to allege how the alleged FRCA violations had caused the plaintiff any harm, and therefore the plaintiff failed to show he had suffered an "injury-in-fact" necessary to confer standing under Article III. The Ninth Circuit reversed, holding that Congress's decision to give individuals a private right of action to enforce the FCRA was enough to create Article III standing to sue for an FCRA violation; no additional showing of injury was required.

In a 6-2 decision authored by Justice Alito, the Supreme Court vacated the Ninth Circuit's decision because its standing analysis was "incomplete." Although the Ninth Circuit found the plaintiff had suffered a "particularized" harm (namely, by alleging that the *plaintiff*'s statutory rights were violated by alleged mishandling of *his* personal information), the Supreme Court concluded that the Ninth Circuit failed to consider whether that harm was "concrete," as Article III also requires. "Concrete" harms, the Court emphasized, could be tangible or intangible, but they "must actually exist." Thus, the Court made clear that while "history and the judgment of Congress play important roles" in determining what intangible harms constitute concrete harms, plaintiffs do not "automatically satisf[y] the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." For this reason, the Court held that an allegation of "a bare procedural violation, divorced from any concrete harm," could not satisfy Article III, and a "violation of one of the FCRA's procedural requirements may result in no harm." The Court also made clear that while a "risk of real harm" might be sufficient to satisfy Article III, it was unclear whether "the particular procedural violations alleged in this case entail a degree of risk sufficient to meet the concreteness requirement." As a result, the Supreme Court remanded the case to the Ninth Circuit to conduct its standing analysis anew without taking any position on whether the Ninth Circuit's "ultimate conclusion . . . was correct."

Justice Thomas issued a separate concurrence agreeing with the Court's decision. In his view, the plaintiff might have standing to assert a claim for a violation of 15 U.S.C. § 1681e(b)—which requires consumer reporting agencies to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates"—if this provision was intended to create a private duty owed personally to individuals to protect their information.

Justice Ginsburg, joined by Justice Sotomayor, dissented on the grounds that she believed no remand was necessary. The plaintiff had alleged that Spokeo published more favorable, but inaccurate, information about his education, family situation, and economic status. Because the plaintiff alleged that this information affected his employment prospects, Justice Ginsberg opined that the plaintiff had sufficiently alleged a concrete harm.

Analysis

Spokeo had been closely watched because it presented the question of whether a statutory violation confers Article III standing on a plaintiff who suffered no concrete harm, an issue that had divided several appellate courts. Some courts—including the Sixth, Seventh, Eighth, and Ninth Circuits—have concluded that violations of some federal statutes are sufficient to confer standing even if the plaintiff had not suffered any harm. Other courts—including the Second, Fourth, and Federal Circuit—have reached the opposition conclusion, and an amicus brief authored by Covington on behalf of several major financial trade associations urged the Supreme Court to join these courts in holding that technical violations of federal law cannot give rise to Article III standing if no injury has been suffered.

Rather than fully resolving this conflict, the Court instead offered several guiding principles to help courts draw the line between a "bare procedural violation" (which is not sufficient to satisfy Article III) and conduct that either causes harm or presents a "risk of real harm" (which *does* satisfy Article III). For example, the Court suggested that a consumer reporting agency's failure to provide notice to a user of the user's duties under the FCRA might not satisfy Article III if the information provided by the consumer reporting agency to the user was accurate. Similarly, the Court suggested that providing certain types of false information, such as an inaccurate zip code, "without more, could [not] work any concrete harm."

Importantly, the Court's decision reaffirms several standing principles that can be particularly critical in class action lawsuits. *First*, the decision confirms that, while Congress's role in identifying which intangible injuries constitute actual harms is entitled to some weight, "Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Second*, the Court emphasizes that named plaintiffs seeking to represent a class must personally show they have been harmed; they cannot rely on injuries suffered by putative class members to satisfy Article III's standing requirements. *Third*, although the Supreme Court did not expressly state that this same standing requirement applies to putative class members, any other conclusion would be difficulty to square with this decision and the Court's decision earlier this year in *Tyson Foods*. As a result, establishing that each putative class member suffered a concrete injury could require individualized showings sufficient to defeat class certification.

Although *Spokeo* only involved the FCRA, the Court's opinion could have broader implications beyond the FCRA. Numerous other federal laws—such as the Truth in Lending Act, the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act, the Electronic

Communications Privacy Act, and the Stored Communications Act—have been construed to give plaintiffs a private right of action to recover statutory damages even if they cannot demonstrate that they suffered actual harm. *Spokeo* now clarifies that defendants may attempt to defeat claims arising under such suits—perhaps as early as on a motion to dismiss—by arguing that a plaintiff is only suing for a "bare procedural violation" despite not having suffered any harm or "risk of real harm."

If you have any questions concerning the material discussed in this client alert, please contact the following members of our firm:

Sonya Winner	+1 415 591 7072	swinner@cov.com
Emily Henn	+1 650 632 4715	ehenn@cov.com
Simon Frankel	+1 415 591 7052	sfrankel@cov.com
Eric Bosset	+1 202 662 5606	ebosset@cov.com
Andrew Smith	+1 202 662 5049	asmith@cov.com
Robert Long	+1 202 662 5612	rlong@cov.com
Andrew Soukup	+1 202 662 5066	asoukup@cov.com

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