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High Court Will Clarify Standing Issues In Class Actions

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The first question in any lawsuit is whether the plaintiff can even bring suit, i.e., whether the plaintiff possesses "standing." Generally speaking, to have standing, a plaintiff must have suffered an actual or imminent injury that is causally linked to a defendant's alleged misconduct. This standing requirement ensures that plaintiffs, including class action plaintiffs, seek redress for actual injuries suffered rather than generalized or hypothetical grievances.[1] Nonetheless, plaintiffs have asserted statutory claims with greater frequency despite the fact that they have not suffered an actual, tangible injury. Statutes that have been invoked include:

- Fair Credit Reporting Act, 15 U.S.C. § 1681;
- Stored Communications Act, 18 U.S.C. §§ 2701-2712;
- Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(3); and
- Video Privacy Protection Act, 18 U.S.C. § 2710(c)(1).[2]

Several courts, including the U.S. Court of Appeals for the Ninth Circuit in Robins v. Spokeo Inc., 742 F.3d 409 (9th Cir. 2014), have held that plaintiffs may indeed bring so-called "injury in law" claims because the statute at issue provides a private right of action and statutory damages.[3] On April 27, 2015, the U.S. Supreme Court agreed to grant certiorari review of that controversial decision, and thus take up the question of whether a private plaintiff may sue a company for alleged violations of a federal statute, even though he did not suffer any actual, concrete injury.[4]

The importance of this question cannot be overstated, particularly given the recent proliferation of class actions under consumer protection and data privacy laws, which provide for statutory damages even though those plaintiffs rarely suffer any actual, tangible injury as a result of a violation. Numerous courts have followed Robins' lead and held that class action plaintiffs have satisfied Article III standing requirements based on defendants' alleged violation of statutes that confer private rights of action and provide for statutory damages.[5] Others, however, have held that plaintiffs do not have standing based solely on a statutory violation without having suffered some actual "injury in fact."[6] Thus, the need for clarity on the standing requirements in such suits is particularly acute given the emerging circuit split on whether the violation of a statutory right, by itself, is sufficient to confer standing.

In Robins, the Ninth Circuit held that Thomas Robins had standing to sue Spokeo Inc. on behalf of himself and others for allegedly reporting inaccurate information about his income and education on its website in violation of the Fair Credit Reporting Act.[7] Robins alleged that the claimed inaccuracies would make it more difficult for him to gain employment and obtain credit in the future.[8] Even though Robins had not actually suffered any real, tangible injury, the Ninth Circuit found that Robins satisfied the two requirements for the alleged violation of a statutory right to confer standing even without one: (1) he was "'among the injured,' in the sense that [he] allege[d] that [Spokeo] violated [his] statutory rights," and (2) the statutory right at issue "protect[ed] against 'individual, rather than collective, harm.'"[9] Spokeo violated his statutory rights under the FCRA, and his "personal interests in the handling of his credit information are individualized rather than collective."[10]

On several prior occasions, the Supreme Court declined to review this question.[11] But the stakes are undoubtedly higher this time, particularly in the class action arena where billions of dollars could be at stake. Indeed, plaintiffs stand to recover significantly large sums under the Robins standard. Under the FCRA alone, the penalty is damages of $1,000 per violation. Accordingly, numerous companies and trade associations filed amicus briefs imploring the court to grant review because, if allowed to stand, the Ninth Circuit's decision would open the floodgates to class action claims.

Therefore, companies whose businesses are subject to data privacy and consumer protection statutes, as well as any other state and federal laws that provide for statutory damages, should be mindful of the following standing considerations in defending against such claims:

- Notwithstanding Robins, defendants up against FCRA and non-FCRA claims should still raise standing challenges at the pleading stage. A narrow ruling in favor of Robins on the merits would leave open the possibility of asserting a viable "no standing" defense.

- Defendants facing claims in the Sixth, Seventh and Ninth Circuits should be especially focused on preserving the standing issue in the event Robins is overturned by the Supreme Court.

While we await a decision on the merits in Robins, class action defendants should remain vigilant in policing claims against them to ensure that claims by potential plaintiffs are grounded in actual, cognizable harm suffered. Absent that, the hope is that the Supreme Court does not disturb long-settled law in the class action litigation context that prevents plaintiffs from claiming foul where they have not suffered any harm.

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[1] See Wal-Mart Stores Inc. v. Dukes, 131 S. Ct. 2541, 2550 (2011).

[2] Other, less prominently asserted statutes include the Wiretap Act, 15 U.S.C. §§ 2510-2522, Real Estate Settlement Procedures Act, 12 U.S.C. §2607(d), Cable Communications Privacy Act, 47 U.S.C. §§ 551(f)(1)-(2), Truth in Lending Act, 15 U.S.C. §§ 1692k(a)(1), 2(A), Electronic Funds Transfer Act, 15 U.S.C. § 1693m(a)(2), Equal Credit Opportunity Act, 15 U.S.C. § 1691e(a), and Credit Repair Organizations Act, 15 U.S.C. § 1679g(a)(1)(B). Plaintiffs have also asserted claims under similar state statutes, including California's Consumer Legal Remedies Act, Unfair Competition Law, and False Advertising Law.

[3] The Sixth and Seventh Circuits have also held that plaintiffs have Article III standing to assert claims under the FCRA "without proof of injury." Murray v. GMAC Mortgage Corp., 434 F.3d 948, 952-53 (7th Cir. 2006); see also Beaudry v. TeleCheck Svcs., Inc., 579 F.3d 702, 705-07 (6th Cir. 2009). On the other hand, the Second, Fourth, and Federal Circuits have held, albeit outside the FCRA context, that plaintiffs do not have standing based solely on a statutory violation without having suffered some injury. See Kendall v. Emp. Ret. Plan of Avon Prods., 561 F.3d 112, 121 (2d Cir. 2009); David v. Alphin, 704 F.3d 327, 338-39 (4th Cir. 2013); Consumer Watchdog v. Wis. Alumni Research Found., 753 F.3d 1258, 1262 (Fed. Cir. 2014).

[4] See Spokeo Inc. v. Robins, No. 13-1339 (U.S. Apr. 27, 2015), cert. granted.

[5] See, e.g., Purcell v. Spokeo Inc., No. 2:11-cv-06003, 2014 U.S. Dist. LEXIS 118280, *7 (C.D. Cal. Aug. 25, 2014) (claims brought under FCRA); Dreher v. Experian Info. Solutions Inc., Case No. 3:11-cv-624, 2014 U.S. Dist. LEXIS 167534, *10 (E.D. Va. Dec. 3, 2014) (same); Hammer v. Sam's East Inc., 754 F.3d 492, 500 (8th Cir. 2014) (claims brought under Fair and Accurate Credit Transactions Act); Opperman v. Path Inc., Case No. 13-cv-00453, 2014 U.S. Dist. LEXIS 67225, **30-31 (N.D. Cal. May 14, 2014) (claims brought California's Unfair Competition Law and Legal Remedies Act).

[6] See, e.g., Kendall v. Emp. Ret. Plan of Avon Prods., 561 F.3d 112, 121 (2d Cir. 2009); David v. Alphin, 704 F.3d 327, 338-39 (4th Cir. 2013); Consumer Watchdog v. Wis. Alumni Research Found., 753 F.3d 1258, 1262 (Fed. Cir. 2014).

[7] The FCRA, 15 U.S.C. § 1681 et. seq., imposes certain obligations on consumer reporting agencies with respect to the information they provide about consumers' credit information, including an obligation to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. § 1681e(b). Spokeo "operates a website that provides users with information about other individuals, including contact data, marital status, age, occupation, economic health, and wealth level." Robins, 742 F.3d at 409.

[8] See Robins, 742 F.3d at 410, 413.

[9] Id. at 413 (quoting Beaudry, 579 F.3d at 707).

[10] Id.

[11] See First Am. Fin. Corp. v. Edwards, 132 S. Ct. 2536 (2012) (question presented under Real Estate Settlement Procedures Act); Mutual First Fed. Credit Union v. Charvat, 134 S. Ct. 1515 (2014) (question presented under Electronic Fund Transfer Act).