

SUPREME COURT HOLDS PLAINTIFFS MUST ALLEGE "CONCRETE" INJURY TO BRING A CLAIM

"No injury" class actions based on technical statutory violations appear to have taken a significant blow today with the U.S. Supreme Court's decision in *Spokeo, Inc. v. Robins*. The high court held that plaintiffs who allege only a bare violation of a statute without any resulting harm lack constitutional standing to bring a claim.

The claims in *Spokeo* arose under the Fair Credit Reporting Act (FCRA) but the Court's ruling has the potential to impact plaintiffs' ability to have standing to bring and pursue statutory class action lawsuits under a variety of other federal statutes as well, including the Telephone Consumer Protection Act, the Fair Debt Collections Practices Act, and other consumer protection statutes. Under the FCRA alone, there may be hundreds of currently pending class actions around the country that are at risk of being dismissed as a result of today's ruling.

Among other things, the FCRA requires employers to adhere to certain procedural requirements in order to obtain and use background information (such as criminal and credit information) about applicants for employment. Commonly-alleged violations include defects in an employer's written notice before obtaining a consumer report and the procedure and timing of providing advance notice of adverse action following the receipt of a negative consumer report/background check. The FCRA provides for statutory damages up to \$1,000 for each "willful" violation, along with punitive damages and attorneys' fees. Putative classes may number in the thousands depending on the size of the employer. These cases seek significant recoveries on a class wide basis for "technical" violations of the FCRA often despite the absence of any real injury to the plaintiffs. The statute also is used to bring class action claims against Consumer Reporting Agencies (CRAs) who fail to follow the strict requirements of the FCRA.

The Court's 6-2 decision may have put an end to many of these types of cases, holding that a plaintiff must allege an actual, concrete injury to maintain statutory individual or class action claims. In *Spokeo*, plaintiff Thomas Robins

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alleged violations of the FCRA based on the people-search website's purported publication of false information about him. In February 2014, the U.S. Court of Appeals for the Ninth Circuit held that Robins did not need to allege an actual concrete injury (beyond a violation of a statutory right) to maintain his statutory class action claims under the FCRA. The Supreme Court vacated and remanded the Ninth Circuit's ruling, holding that plaintiffs must allege an actual, concrete injury to have Article III standing to pursue statutory class action claims.

For client companies currently defending litigation in which there is a question as to whether the plaintiff actually suffered a "concrete injury," your AT attorneys are currently analyzing the applicability of the *Spokeo* decision to your matter.

If you have any questions about the *Spokeo* decision, please contact Michael Kass, Matt Turner or Paul Croker, or your regular AT contact.