

Supreme Court Confirms Standing Requirements Apply at All Stages of Litigation

Akin Gump
STRAUSS HAUER & FELD LLP

Class Actions Alert

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Key Points:

- On March 20, 2019, the U.S. Supreme Court remanded a case involving the use of *cy pres* in lieu of specific relief to individual class members in a proposed settlement for a determination of whether the plaintiffs had standing to bring their claims under the Court's seminal *Spokeo* decision.
- The Court reiterated that Article III standing requires a concrete and particularized injury, even if a plaintiff otherwise alleges a federal statutory violation and invokes a statutory cause of action.
- This significant decision highlights the need for a plaintiff to show concrete and particularized injury at all stages of a case—including at final approval of a class action settlement.

On March 20, 2019, the U.S. Supreme Court vacated the 9th Circuit's approval of a class settlement and remanded the case for determination of whether named plaintiffs had Article III standing under the Court's seminal *Spokeo* decision. The Court had granted *certiorari* in *Frank v. Gaos* to review the fairness of a class settlement that established a *cy pres* fund in lieu of payments to class members. While the *per curiam* decision did not reach that issue, Justice Thomas in dissent indicated that he would not have approved the settlement because it failed to give class members any meaningful relief. Although the Court did not address the merits, its opinion is an important reminder that Article III's standing requirements apply to plaintiffs presenting proposed class settlements.

The case arose out of Google's use of referrer headers. Plaintiffs alleged that, when a user of the search engine clicked on a link listed in the search results, Google transmitted the search terms to the server hosting the linked webpage. According to plaintiffs, this violated the Stored Communications Act (SCA), a federal statute that prohibits certain entities from knowingly disclosing the contents of stored electronic communications and creates a private right of action for statutory violations. Although Google moved to dismiss on Article III grounds several times, its motions were ultimately unsuccessful, because of pre-*Spokeo* precedent from the 9th Circuit that had found standing where a plaintiff alleged a violation of federal statutes that permitted a private right of action.

Contact Information

Kathryn Deal
Partner
Email: kdeal@akingump.com
Philadelphia
+1 215.965.1219

Michael McTigue
Partner
Email: mmctigue@akingump.com
Philadelphia
+1 215.965.1265

Michael Stortz
Partner
Email: mstortz@akingump.com
San Francisco
+1 415.765.9508

The parties subsequently reached a class settlement, pursuant to which the majority of the settlement funds would be paid to *cy pres* recipients, with no funds paid to class members. The district court approved the settlement over the objections of two class members, who then appealed. The 9th Circuit affirmed, without addressing the Court's then-recent *Spokeo* decision, which held that Article III standing requires a concrete and particularized injury, even if the plaintiff otherwise alleges a federal statutory violation and invokes a statutory cause of action.

The Court granted *certiorari* to address the propriety of whether a class settlement that provides benefits to *cy pres* recipients—but not class members—can be approved as fair and reasonable. The Court did not reach that issue, however, and instead directed supplemental briefing on the issue of plaintiffs' standing in light of *Spokeo*. The Court ultimately remanded for a determination by the lower courts whether Article III's standing requirements were met by plaintiffs' claims.

In so doing, the Court confirmed that standing requirements apply even at the stage of final approval of a proposed class settlement. Because the authority to approve class settlements requires that a court have jurisdiction over the action, and no court had determined whether Article III jurisdiction existed over plaintiffs' claims after *Spokeo*, the Court remanded for further proceedings on that jurisdictional issue.

The outcome in *Frank* highlights the importance that the plaintiff show concrete and particularized injury at all stages of the case—including final settlement approval. Claims of an alleged statutory violation without any resulting injury are an all too familiar feature of privacy litigation, including, but certainly not limited to, claims under the SCA. *Frank* provides a helpful reminder that Article III's actual injury requirement must be satisfied at every step of the case, in accord with *Spokeo*, even if the plaintiff's ultimate objectives are not to remedy real injury, but to obtain a substantial classwide resolution. It is left for another day whether the use of *cy pres* in lieu of meaningful relief to class members in proposed settlements will ultimately survive the scrutiny of the Court.

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