

Supreme Court and Appellate Alert

April 28, 2015

Supreme Court to Consider Constitutional Limits on Statutory-Damages Suits

On Monday, April 27, 2015, the Supreme Court agreed to hear an important constitutional case that could dramatically limit the viability of class action lawsuits claiming millions or billions of dollars in statutory damages for technical violations of federal privacy, data breach and consumer protection laws. The Supreme Court took the case at the urging of a number of companies and groups—such as Facebook, Google, Trans Union, the U.S. Chamber of Commerce and the Consumer Data Industry Association—with a strong stake in discouraging such abusive and costly class actions.

At issue in *Spokeo v. Robins* (No. 13-1339) is whether Congress can lawfully confer Article III standing on a plaintiff or group of plaintiffs for a bare violation of a federal statute and in the absence of any concrete harm (so-called “statutory injury”). The case arises from a dispute between Spokeo, Inc., an operator of a “people search engine” that generates search results based on publicly available information, and Thomas Robins, an individual who appeared in Spokeo’s search results. Robins filed suit against Spokeo in 2010 on behalf of a putative class of “millions of individuals” over allegedly willful violations of the Fair Credit Reporting Act (FCRA). The Ninth Circuit held that Robins possessed Article III standing to bring suit based on Congress’ creation of a private right of action for willful FCRA violations—and that no further injury allegation was required.

The Supreme Court’s answer to the statutory injury question raised in *Spokeo* could have an enormous impact on class action defense, because of the number of laws providing for statutory damages, as well as the potential exposure that companies face under such statutes. Large corporations are often forced to defend against class action suits seeking statutory damages for technical violations of a host of federal laws: FCRA, the Fair Debt Collection Practices Act, the Real Estate Settlement Procedures Act, the Fair and Accurate Credit Transactions Act, the Telephone Consumer Protection Act, the Truth in Lending Act, the Lanham Act, the Video Privacy Protection Act, the Electronic Communications Privacy Act, the Stored Communications Act, the Cable Communications Privacy Act and others. And because many of these laws provide statutory damages of \$1,000 per violation, a defendant’s potential exposure—including Spokeo’s exposure in this FCRA suit—often must be measured in the billions.

Frequent targets of class action suits should thus take note: a Supreme Court decision requiring a showing of concrete and individualized harm as a predicate for obtaining statutory damages could prove to be an extremely potent defense against costly class actions and even discourage some plaintiffs from bringing suit altogether. At the very least, a favorable ruling would make class certification much more difficult for plaintiffs, who would be required to allege and to prove injury individually (rather than classwide) going forward. No matter what, *Spokeo* promises to be one of the most significant corporate cases in the Supreme Court’s 2015 term.

The merits briefs in *Spokeo* are due this summer, and the case will likely be argued this fall.

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