

Litigation Alert

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Spokeo v. Robins: Statutory Violation Does Not Automatically Create a Case or Controversy Under Article III

Earlier this week, the Supreme Court issued its highly anticipated [decision](#) in *Spokeo v. Robins* (see our previous posts on the [case](#) and [oral argument](#)). The United States Supreme Court held that a plaintiff must show that an injury is both concrete and particular to have standing under Article III of the Constitution. Therefore, alleging a statutory violation does not automatically confer standing on a plaintiff. The plaintiff must allege how the statutory violation caused a concrete harm to the plaintiff. Just what constitutes a concrete injury was not decided. Instead, the Court remanded the case to the 9th Circuit to determine whether Robins adequately alleged a “concrete” injury-in-fact.

Numerous federal statutes (e.g., the Fair Credit Reporting Act (FCRA), Telephone Consumer Protection Act and Video Privacy Protection Act) provide civil penalties for their violation without requiring actual injury. *Spokeo* makes clear that simply alleging a violation of these statutes is not enough to establish standing. However, *Spokeo* provides little guidance on what must be alleged to establish a concrete injury. The 9th Circuit’s decision on remand will hopefully provide more guidance.

Facts

Thomas Robins sued Spokeo, a “people search engine,” claiming that it published false information about him—that he was wealthy, married with children and working in a professional field with a graduate degree. Robins alleged that Spokeo violated the FCRA by not “follow[ing] reasonable procedures to assure maximum possible accuracy of” its reports. Robins contended that the standing requirements of Article III were satisfied because potential employers would be deterred from hiring him, believing that he was overqualified for the position or was unwilling to relocate due to his family.

The district court dismissed the action for failure to plead an injury that was traceable to Spokeo’s alleged violations. The 9th Circuit reversed, holding that a showing of actual harm was not required when a plaintiff sued for willful FCRA violations. Instead, it held that an alleged violation of a statutory right was sufficient to satisfy Article III’s injury-in-fact requirement.

Ruling

In a 6-2 decision written by Justice Alito, the Supreme Court held that, to establish standing, a plaintiff must show that his injury-in-fact was both “concrete and particularized.”

The Court explained that, while the 9th Circuit had determined that Robins’ injury was particular (i.e., “affected the plaintiff in a personal and individual way”), the 9th Circuit failed to consider whether it was concrete. Instead, the 9th Circuit had conflated those requirements, concluding that Robins had alleged a

“concrete” injury because it was particularized: Robins had alleged that “Spokeo violated his statutory rights,” and his “personal interests in the handling of his credit information are individualized.”

The Supreme Court made clear that a concrete injury was not necessarily synonymous with a tangible injury. Intangible injuries (e.g., harm to reputation) can be concrete. However, alleging a violation of a statute does not always establish “concreteness.” For example, falsely stating a person’s ZIP code is not usually harmful. To determine “concreteness,” courts must consider history and Congress’ intent in enacting a statute. While, in the FCRA, “Congress plainly sought to curb the dissemination of false information by adopting procedures designed to decrease that risk,” alleging “a bare procedural violation” does not “satisfy the demands of Article III.”

The Court remanded the case to the 9th Circuit to determine whether the specific abuses of the FCRA that Robins alleged create a “degree of risk sufficient to meet the concreteness requirement.”

Contact Information

If you have any questions regarding this alert, please contact:

Rex S. Heinke

rheinke@akingump.com
+1 310.229.1030
Los Angeles

Natasha G. Kohne

nkohne@akingump.com
+1 415.765.9505
San Francisco*

Anthony T. Pierce

apierce@akingump.com
+1 202.887.4411
Washington, D.C.

Michelle A. Reed

mreed@akingump.com
+1 214.969.2713
Dallas

James Edward Tysse

jtyss@akingump.com
+1 202.887.4571
Washington, D.C.

Daniela M. Spencer

dspencer@akingump.com
+1 310.728.3289
Los Angeles

Matthew A. Scarola

mscarola@akingump.com
+1 415.765.9507
San Francisco

*Licensed to practice for 15 years in New York. Practicing in California under the supervision of the partners of Akin Gump Strauss Hauer & Feld LLP. Application for admission to the California Bar pending.