

INSIGHTS

High Court Underscores Injury Requirement for Statutory Class Actions

May 17, 2016

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In a critical ruling for businesses concerned by the threat of growing class-action litigation, the Supreme Court decided on May 16, 2016 that plaintiffs must allege a concrete injury-in-fact to maintain statutory class action claims. Writing for the 6-2 majority in [Spokeo, Inc. v. Robins](#), [578 U.S. ____ \(2016\)](#), Justice Alito emphasized that “Article III standing requires a concrete injury even in the context of a statutory violation.” The case, which featured several *amicus* briefs from Facebook, Google, eBay, and Yahoo, among others, should help shield industries from plaintiffs seeking to leverage an array of consumer protection statutes without pleading any concrete harm apart from the bare procedural violations provided by Congress.

In *Spokeo*, the plaintiff initially filed a class-action complaint in the United States District Court for the District of California, alleging that Spokeo, Inc., a “people search engine,” willfully failed to comply with certain requirements of the Fair Credit Reporting Act. The plaintiff claimed that Spokeo had generated a profile for him that contained inaccurate information regarding his wealth, education and employment status. After the District Court dismissed his complaint with prejudice for failing to properly plead an injury, a panel of the Ninth Circuit reversed, finding that plaintiff had satisfied Article III’s injury-in-fact requirement because he had sufficiently alleged violations of his statutory rights under the FCRA. See 742 F.3d 409 (9th Cir. 2014).

In the majority opinion, Justice Alito, joined by Justices Roberts, Kennedy, Thomas, Breyer and Kagan, explained that a plaintiff is constitutionally required to establish an injury-in-fact by showing that he or she has suffered “an invasion of a legally protected interest that is *concrete and particularized . . .*”, and that the Circuit Court only considered whether plaintiff’s injuries were particularized, but not whether they were concrete. (emphasis added). Justice Alito, emphasizing that concrete means “real” and “not abstract,” found that the considerations relied upon by the Ninth Circuit were related to particularization. “Because the Ninth Circuit failed to fully appreciate the distinction between concreteness and particularization, its standing analysis was incomplete.”

Notably, the majority agreed that, in some circumstances, it is possible for a plaintiff to satisfy the injury-in-fact requirement by alleging concrete harm stemming from the violation of a procedural right granted by a statute. On the other hand, the Court noted that mere allegations of a procedural violation may not be enough to show concrete harm. By way of example, Justice Alito remarked that, while possibly a procedural violation of the FCRA, “it is difficult to imagine how the dissemination of an incorrect zip code, without more, could work

any concrete harm.” The Supreme Court remanded the case for a determination of whether the particular procedural violations alleged entail a degree of risk sufficient to meet the concreteness requirement.

To learn more about this issue, please contact [**Rachel Goldman**](#), [**David Shargel**](#), or [**Ben Koblentz**](#).