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***Spokeo, Inc. v. Robins*: U.S. Supreme Court to Consider Whether Plaintiffs Have Standing to Assert a Statutory Violation without Alleging any Actual Harm**

By: Andrew C. Glass; Brian M. Forbes; Gregory M. Blase; Robert W. Sparkes, III; Roger L. Smerage; Eric W. Lee

The United States Supreme Court has granted certiorari to decide whether a statutory violation alone, unaccompanied by any actual harm to the plaintiff, is sufficient to establish Article III standing. See *Spokeo, Inc. v. Robins*, No. 13-1339 (U.S. Apr. 27, 2015). In other words, the Court will consider whether a plaintiff has a constitutional right to bring a lawsuit in federal court seeking damages provided by statute in the absence of allegations of actual harm. While the *Spokeo* case arises in the context of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681, *et seq.*, a decision by the Court could affect how federal courts assess standing to bring claims under a wide range of federal statutes that provide for a private right of action for statutory damages. Indeed, in 2011, the Supreme Court had granted certiorari to decide a similar question arising under the federal Real Estate Settlement Procedures Act (“RESPA”), 12 U.S. Code § 2601, *et seq.* See *First American Financial Corp. v. Edwards*, 131 S. Ct. 3022 (2011). After briefing and oral argument, however, the Court dismissed the *Edwards* petition as improvidently granted, and the issue was not decided.

Like many federal consumer protection statutes, such as RESPA, the Truth-in-Lending Act, and the Fair Debt Collection Practices Act, FCRA provides a private right of action for statutory damages in certain contexts. See 15 U.S.C. § 1681n. In *Spokeo*, a consumer alleged that a website operator published inaccurate information about him in violation of FCRA, but the consumer did not assert that the purported violation caused him any actual harm. The United States District Court for the Central District of California dismissed the consumer’s case for lack of standing, holding that the mere violation of FCRA does not confer standing in the absence of actual injury. *Robins v. Spokeo, Inc.*, No. CV10-05306 ODW AGRX, 2011 WL 11562151, at *1 (C.D. Cal. Sept. 19, 2011). The United States Court of Appeals for the Ninth Circuit reversed, holding that “Congress intended the enforceable provision to create a statutory right” and that “the violation of a statutory right is usually a sufficient injury in fact to confer standing.” *Robins v. Spokeo, Inc.*, 742 F.3d 409, 412 (9th Cir. 2014) (citing *Edwards v. First American Corp.*, 610 F.3d 514, 517 (9th Cir. 2010)).

The Supreme Court’s decision in *Spokeo* may resolve the circuit split on the issue of whether a statutory violation alone can satisfy Article III’s injury-in-fact requirement. In addition to the Ninth Circuit, the Sixth, Seventh, and Eighth Circuits have held that statutory damages are available under FCRA without proof of actual injury. See *Beaudry v. TeleCheck Services, Inc.*, 579 F.3d 702, 705–07 (6th Cir. 2009); *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 952–53 (7th Cir. 2006); *Hammer v. Sam’s East, Inc.*, 754 F.3d 492, 499–500 (8th Cir. 2014). By contrast, the Second and Fourth Circuits have held that a plaintiff pursuing a statutory

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cause of action providing for statutory damages must still demonstrate actual harm to establish Article III standing. See *Kendall v. Employees Retirement Plan of Avon Prods.*, 561 F.3d 112, 121 (2d Cir. 2009); *David v. Alphin*, 704 F.3d 327, 338–39 (4th Cir. 2013).

A decision by the Supreme Court affirming the Ninth Circuit's holding would likely afford a plaintiff Article III standing merely by alleging violation of a federal statute without anything more. If the Court reverses, however, to establish Article III standing, a plaintiff will likely be required to allege not only a violation of a federal statute but also allege resulting harm. As such, the Court's resolution of this issue is likely to have significant implications for class action and individual litigation under a wide range of federal statutes, including FCRA.

K&L Gates LLP will continue to monitor this case and will post developments as they occur. Oral argument is likely to take place in the fall of 2015 or the winter of 2015–2016, and a decision will likely follow by June 2016, when the Court finishes its next term.

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