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Ninth Circuit Looks to *TransUnion v. Ramirez* in FCRA Case to Hold That Unnamed Class Members Must Provide Evidence of Standing Sufficient to Survive Summary Judgment

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In *TransUnion v. Ramirez*, the United States Supreme Court's landmark Fair Credit Reporting Act (FCRA) decision, the Court ruled that in addition to the named plaintiff, the unnamed class members must also have Article III standing to recover monetary damages. The Ninth Circuit, citing *TransUnion*, recently held that unnamed class members must show Article III standing not only to recover damages, but also to survive summary judgment. It also indicated that its earlier rulings, which overlooked individual standing issues during the certification phase of damages class actions, are no longer valid.

In *Healy v. Milliman, Inc.*, the plaintiff sought life insurance, and as a part of the application, potential insurers requested a copy of the plaintiff's medical and prescription history from Milliman, a consumer reporting agency that compiles reports on the medical histories of consumers and sells them to third-party insurers to evaluate consumers for insurance products. The report that Milliman supplied to the plaintiff's potential life insurers contained another individual's medical records and social security number, and wrongly attributed serious medical conditions to the healthy plaintiff. The plaintiff was denied life insurance because of the flags contained in Milliman's reports. The plaintiff filed a class action lawsuit against Milliman under the FCRA, contending that the company failed to adopt reasonable procedures to assure maximum possible accuracy in its reported information for him and others.

The federal district court in the Western District of Washington certified a class of over 300,000 people, representing individuals who were the subjects of reports that Milliman sold to insurance companies and had conflicting social security number data and risk flags related to those individuals. In response, Milliman filed a motion for partial summary judgment that contended that the plaintiff was obligated to demonstrate class-wide Article III standing for the entire class, not just himself as the named class representative. The plaintiff argued that only the named class representative had to prove standing, and the unnamed class could wait until trial (arguably, until judgment) to prove standing. The district court granted Milliman's motion because it determined that the unnamed class members could not demonstrate that there was a genuine issue of material fact as to whether they had Article III standing.

At the Ninth Circuit, the question was whether, after a class has been certified, both named and unnamed class members must present evidence of Article III standing to survive summary judgment in a money damages suit. The Court cited *TransUnion* and agreed with the district court's ruling that the unnamed class members were obligated to present evidence of Article III standing sufficient to survive summary judgment. The Ninth Circuit explained that, while the unnamed class members are not required to prove they have standing to go to trial, they do need to provide evidence establishing that there is a genuine issue of material fact warranting trial once a class has been certified.

The Ninth Circuit found that surface evidence of injury—such as mismatched social security numbers in credit files disseminated to third parties—might be sufficient for the class to survive summary judgment. In other words, the Ninth Circuit did not say that, at the summary-judgment stage, the class had to conclusively prove that a mismatched social security number led to a denial of insurance or some similar harm. However, the Ninth Circuit also rejected the plaintiff's reliance on pre-*TransUnion* authority finding that individual issues of standing will not defeat class certification. Admittedly, *Healy* dealt only with summary judgment and not class certification. But the Court's reasoning provides further support for opposing class certification based on individualized issues of injury.

Healy is another example of the guardrails that federal appellate courts have put on consumer class actions in the post *Spokeo* and *TransUnion* world. While courts are not outright limiting the employability of consumer class actions, there is a trend limiting named plaintiffs' ability to obtain class certification and head straight to trial and simply dragging the unnamed class members along for the ride. Indeed, *Healy* provides defendants with another avenue to try to defeat (or narrow) a class even after the class has been certified.

Husch Blackwell has experience defending both furnishers and consumer reporting agencies in individual as well as class action lawsuits brought under the FCRA. If you have any questions or need

assistance with FCRA claims, please reach out to Brandon Stein, Scott Helfand, or your Husch Blackwell attorney.[1]

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[1] Mr. Stein, Mr. Helfand, and Husch Blackwell LLP do not represent individuals in FCRA claims asserted against either furnishers or consumer reporting agencies.