LEGAL UPDATES

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Supreme Court Paves the Way for More State Court Class Actions About Federal Statutes

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On June 25, 2021, in *TransUnion LLC v. Ramirez*, the U.S. Supreme Court issued a 5-4 decision, reemphasizing that a plaintiff must have concrete harm caused by a violation of the Fair Credit Reporting Act (FCRA) in order to have Article III standing. As a result, the Supreme Court dramatically narrowed the scope of the plaintiff's class action. The case is a big win for the defendant (TransUnion), but may pose problems for other class-action defendants seeking to avoid state court.

As noted in the opinion, Article III limits the federal judicial power to the resolution of "Cases" and "Controversies" in which a plaintiff has a "personal stake." In order to have Article III standing to bring a lawsuit in federal court, a plaintiff must show, among other things, that the plaintiff suffered concrete injury. As Justice Kavanaugh succinctly stated in his opinion for the Court: "No concrete harm, no standing." Under Article III, an injury in law under a statute—i.e., a statutory violation—is not in and of itself necessarily an injury in fact.

The FCRA, 15 U.S.C. §1681 *et seq*., regulates, among others, consumer reporting agencies that compile and disseminate information about consumers. And FCRA provides a cause of action for consumers to sue credit reporting agencies and recover damages for certain violations, including violations related to inaccurate credit-reporting. §1681n(a).

TransUnion is one of the "Big Three" credit reporting agencies. In *Ramirez*, a class of 8,185 individuals, allegedly incorrectly labeled as potential terrorists in their credit files, sued TransUnion, claiming that it failed to use reasonable procedures to ensure the accuracy of their credit files. The class members also complained about "formatting defects" in mailings sent to them by

TransUnion. At trial, each class member was awarded $984.22 in statutory damages plus $6,353.08 in punitive damages, totaling around $60 million. For the vast majority of these class members—over 75%—their credit files bearing the potential-terrorist alert were never disseminated to any third party during the relevant time period.

The question in *Ramirez* focused on the Article III requirement that a plaintiff's injury be "concrete." For 1,853 of the class members, TransUnion provided misleading credit reports to third-party businesses. The Court found that those 1,853 class members demonstrated concrete reputational harm, and, therefore, they have Article III standing to sue on the reasonable-procedures FCRA claim. In finding that these class members had standing, the Court agreed with the plaintiffs' argument that their injury bears a "close relationship" to the reputational harm associated with the tort of defamation, a harm historically recognized as a basis for a lawsuit in federal court. Thus, the Court had "no trouble concluding that the 1,853 class members suffered a concrete harm that qualifies as an injury in fact."

The credit files of the other 6,332 class members also contained the alleged misleading alerts, but TransUnion did not provide those plaintiffs' credit information to any third parties during the relevant time period. The Supreme Court noted that the existence of inaccurate information, without dissemination, traditionally does not provide grounds for a lawsuit in federal court. Consistent with this principle, the Court concluded that those 6,332 class members could not demonstrate that the misleading information in the credit files itself establishes concrete harm. For this reason, the Court held that those 6,332 class members lack Article III standing to sue on the reasonable-procedures claim.

The plaintiffs also argued standing based on their exposure to the risk that the misleading information would be disseminated in the future. The Court was not persuaded by this argument, finding that risk of future harm—without any other accompanying harm—is insufficient to establish standing for a damages claim.

As to the "formatting errors" claim, the Court found that none of the class members had shown concrete injury. Thus, none of them had standing on that claim. At the same time, though, the Court assumed that the named Plaintiff had standing to raise the formatting issue.

Justice Thomas dissented, joined by Justices Breyer, Sotomayor and Kagan. In his dissent, Justice Thomas concluded that even the class members whose reports were not disseminated to third parties still suffered harm, stating, "TransUnion's misconduct here is exactly the sort of thing that has long merited legal redress." Justice Kagan also dissented separately, joined by Justices Breyer and Sotomayor. In so doing, Justice Kagan emphasized her disagreement with the majority's conclusion that the majority of class members had only "speculative" harm.

The Court's ruling is important for consumer-facing businesses defending against lawsuits predicated on federal statutory claims. It reaffirmed and strengthened the Court's previous warning in *Spokeo v. Robins* five years ago that statutory violations, without a concrete injury, do not create standing.

What this means to you

While the Court's ruling dramatically narrows TransUnion's exposure in this case, there is a dark shadow here. Plaintiffs remain free to pursue these claims in state court, and state courts (especially in consumer-friendly states) tend to have less strict-standing requirements. So—like the Court's decision in S*pokeo*—this case may result in businesses facing more class actions in state court alleging violations of federal law. Because many state courts are consumer friendly on both the merits and the ability of plaintiffs to get a class certified, *Ramirez* might come to haunt businesses and their advocates.

Contact us

If you have any further questions or require information regarding this update or how it affects you, please contact Scott Helfand, Michael Klebanov, Natalia Kruse or your Husch Blackwell attorney.