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State Courts May Become Sole No-Injury Class Action Forum


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Law360, New York (January 8, 2016, 10:54 AM EST) -- A problem vexing many American businesses today is the spate of "no injury" class actions being filed by an aggressive plaintiffs bar. Citing technical violations of various statutory requirements — such as the Fair Credit Reporting Act, the Telephone Consumer Protection Act, the Fair and Accurate Credit Transactions Act or the Truth in Consumer Contract, Warranty and Notice Act — these suits seek to impose civil penalties on companies even when no class member was actually injured by the complained-of conduct.

In November, the U.S. Supreme Court heard oral argument in a case that could put an end to these no-injury suits in federal court — Spokeo Inc. v. Robins, No. 13-1339 (2015), which examines whether a statutory violation entitling a consumer to civil penalties in the absence of actual economic injury confers Article III standing under the Constitution. If the court finds that no standing exists, Spokeo and, presumably, other class actions like it will be dismissed by the federal courts.

But what happens next? Unfortunately, if these no-injury cases are knocked out of the federal court, it may simply mean that the suits will be brought in the state courts. Given the lack of Article III standing, defendants may then be deprived of the ability to remove them to federal court under the Class Action Fairness Act. Accordingly, a defense win in Spokeo may have the perverse result of relegating defendants to state court, which has traditionally been viewed a more plaintiff-friendly forum.

Spokeo: The Facts at a Glance

In Spokeo, plaintiff Thomas Robins brought suit on behalf of himself and others similarly situated against "people search engine" Spokeo Inc. under the FCRA — which provides, among other things, that consumer reporting agencies must follow "reasonable procedures" to assure accuracy of the information in consumer reports. The statute provides that willful failure to comply with any requirement results in liability for actual damages or "damages of not less than $100 and not more than $1,000."

Robins alleges willful violations of the FCRA because the Spokeo website allegedly described him as holding a graduate degree and as wealthy — information that Robins says is untrue. As an unemployed individual, Robins asserted the misinformation on the website

affected his employment prospects.

Spokeo contends that Robins cannot sue under the FCRA without showing actual harm. Spokeo prevailed on this argument before the district court, but the Ninth Circuit reversed, reasoning that actual harm is not required when a plaintiff sues for the willful violation of a technical requirement in the statute. The court held that alleged violations of Robins's statutory rights were thus sufficient to confer Article III standing.

This issue is now before the United States Supreme Court.

Variation in Standing Doctrine Among the States

In federal court, standing is based upon the "case or controversy" requirement of Article III of the United States Constitution. But it is well established that the limitations of Article III do not apply to state courts and that state courts are not constrained by the "case or controversy" requirement. Accordingly, although most states have some form of standing doctrine, it can be less exacting than the federal framework. For example, in 2010, Michigan explicitly rejected the federal constitutional standing test and adopted a more liberal prudential standard for determining whether a plaintiff has standing to sue.[1]

Other states have also employed liberal standing principles. New Jersey, for example, only requires the plaintiff to have a sufficient stake and real adverseness with respect to the subject matter of the litigation and a substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision.[2]

Similarly, Wisconsin boasts that its "law of standing ... is construed liberally, and even an injury to a trifling interest may suffice."[3] In McConkey v. Van Hollen, the Wisconsin Supreme Court stated that it found it difficult to determine the precise nature of the plaintiff's injury, but nevertheless found the plaintiff had standing when he had at least a "trifling" interest in his voting rights.

And in California, "[s]tanding requirements will vary from statute to statute based upon the intent of the Legislature and the purpose for which the particular statute was enacted."[4]

Accordingly, a finding of no Article III standing in federal court does not necessarily mean that state courts will not find standing to assert these no-injury claims.

Potential Ramifications

In the event that Spokeo prevails before the Supreme Court, the differing (and less exacting) standing rules of some states could have profound consequences.

Notably, private actions under many federal statutes providing for statutory damages, including the FCRA and the TCPA, can be brought in either state or federal court. Further, many states have statutes that similarly provide for statutory damages in the absence of actual harm — New Jersey's Truth in Consumer Contract, Warranty and Notice Act statute, which provides for penalties of $100 or more if a consumer contract contains a provision that violates a consumer's clearly established rights, is a prime example.

Under current law, if cases under such statutes are filed in state court, they are typically removed under federal question jurisdiction or, if the amount in controversy is satisfied, diversity jurisdiction under the Class Action Fairness Act. In the event that a case is removed and the federal court finds it lacks Article III standing, the federal court may remand the case back to state court for lack of subject-matter jurisdiction.[5]

Here, if Spokeo prevails and the Supreme Court concludes there is no standing under Article III for "no-injury" class actions, cases like Spokeo could simply shift to state courts

with standing jurisprudence more liberal than the federal standard, with no chance of removal to federal court.

This potential result should not go overlooked by defendants, nor should its possible side effect — a peculiar hodgepodge of enforceability in which a federal statute could be enforceable only in state courts, and only in some state courts at that. For example, so long as states apply varying standing doctrines, a claim under the FCRA might proceed in Michigan state courts, where an expansive standing doctrine applies, but not in Alabama courts, which apply the same standing doctrine as federal courts.[6]

Conclusion

When Congress enacted the Class Action Fairness Act in 2005, it was a life raft for class action defendants because it meant they could escape hostile state courts and have more actions heard before federal judges. Some of that progress might be erased, however, if Spokeo prevails before the Supreme Court, because eliminating a case from the scope of federal jurisdiction will not reflexively render it nonjusticiable in every court system. Instead, it might result in even more confusion as to what claims can be brought, by whom, and where.

A decision in Spokeo is expected in the coming months.

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[1] Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 792 N.W.2d 686, 699 (Mich. 2010).

[2] Jen Electric, Inc. v. County of Essex, 197 N.J. 627, 645 (2009).

[3] McConkey v. Van Hollen, 783 N.W.2d 855, 860 (Wis. 2010) (internal quotations and citation omitted).

[4] Midpeninsula Citizens for Fair Hous. v. Westwood Invs., 271 Cal. Rptr. 99, 104 (Cal. Ct. App. 1990); see also Surrey v. TrueBeginnings, 85 Cal. Rptr. 3d 443, 445 (Cal. Ct. App. 2008).

[5] See 28 U.S.C. § 1447(c).

[6] See Ex Parte Ala. Educ. Television Comm'n, 151 So. 3d 283 (Ala. 2014) (articulating the federal standing test as the means of determining standing in Alabama state courts).