

On April 27, 2015, the US Supreme Court agreed to consider the question of whether Congress can create Article III standing in federal statutes by including a right to recover statutory damages even though a plaintiff has suffered no concrete harm. The Court's decision on this standing question in *Spokeo, Inc. v. Robins*, No. 13-1339, could have far-reaching implications for a wide-range of businesses that are targets of consumer class action lawsuits.

In *Spokeo*, the plaintiff claimed that Spokeo, Inc., a company that collects and aggregates publicly available information about individuals, violated the Fair Credit Reporting Act (FCRA) when it inaccurately reported information about the plaintiff. The plaintiff did not allege any injury caused by the purported FCRA violation, but instead pled statutory damages under the FCRA. The plaintiff also sought to bring the case as a class action. Spokeo moved to dismiss for lack of standing, arguing that Congress could not remove the Article III standing requirement by statute. The district court agreed, but the Ninth Circuit reversed finding that the plaintiff had standing by virtue of the alleged violations of his statutory rights.

The question of whether Congress can confer Article III standing if no injury has been suffered has divided the appellate courts, and the Supreme Court is now positioned to resolve this conflict. However, this is not the first time that the Court has agreed to address this issue. In 2010, the Court agreed to consider the issue in *First American Fin. Corp. v. Edwards*, but later dismissed the case as improvidently granted.

The Court's decision in *Spokeo* is likely to have far broader implications than just FCRA cases. A number of federal statutes have been interpreted as including private rights of action for statutory damages when there has been no actual injury, including statutes that have been particularly attractive to plaintiff class action attorneys such as the Telephone Consumer Protection Act, Video Privacy Protection Act, Fair Debt Collection Practices Act, Truth in Lending Act and Electronic Communications Privacy Act.

The briefing schedule for the case has not been set yet, although the case will likely be briefed over the summer with argument after the term begins in October 2015.

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Contacts

Amy L. Brown

Leader, Class Action & Multidistrict Litigation Practice
Partner, Washington DC
T +1 202 626 6707
E amy.brown@squirepb.com

Pierre H. Bergeron

Leader, Appellate & US Supreme Court Practice
Partner, Cincinnati
T +1 513 361 1289
E pierre.bergeron@squirepb.com

Philip M. Oliss

Partner, Cleveland
T +1 216 479 8448
E philip.oliss@squirepb.com