



Fourth Circuit Applies Spokeo to Vacate \$11.7 Million Class Action Judgment

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The U. S. Court of Appeals for the Fourth Circuit has held that a class representative who failed to allege a concrete injury from incomplete or incorrect information on his credit report did not satisfy the standing requirement of Article III of the U.S. Constitution to establish jurisdiction for a claim under the Fair Credit Reporting Act (“FCRA”). *Dreher v. Experian Information Solutions, Inc.*, Case No. 15-2119 (May 11, 2017). *Dreher* is a clear direction to the district courts in the Fourth Circuit that a determination of standing to enforce the FCRA cannot rest on a violation of the statute. There must also be evidence of a concrete injury resulting from the statutory violation.

Dreher's Claim

During a background check for a security clearance with the federal government, Dreher, the class representative, learned that he had a delinquent Advanta credit card account on his Experian credit report. Dreher disputed whether he was responsible for the account^[1]

Dreher claimed that Experian reported all Advanta credit card accounts in the name of Advanta even though Advanta was in receivership and all the Advanta accounts were being serviced by CardWorks. Dreher contended that Experian should have reported CardWorks as the servicer of Advanta accounts because Dreher unknowingly dealt with representatives of CardWorks when he believed he was dealing with Advanta representatives.^[2] According to Dreher, this caused him stress and wasted time.

District Court's Approach

The district court held that Experian had a duty to provide accurate information for the source of the reported information and that the failure to list CardWorks was a violation of section 1681g(a)(2) of the FCRA. ^[3] The district court decided that the mere violation of the FCRA established standing. The district court failed to analyze if there also was a concrete injury from the statutory violation.

Fourth Circuit Reverses

The Fourth Circuit, in applying *Spokeo* (*Spokeo, Inc., v Robins*, 136 S. Ct. 1540 (2016)), concluded that “a statutory violation *alone* does not create a concrete informational injury sufficient to support standing.” The court noted that there are several ways to satisfy this standing requirement. These include a common law analogue or a denial of access to information required to be disclosed by statute that created a harm that Congress intended to prevent by requiring disclosure.

After examining the evidence, the court concluded that “Dreher is left with a statutory violation divorced

from any real world effect.” The court rejected Dreher’s arguments of real harm. It concluded that there was no evidence that the failure to identify CardWorks slowed the process of correcting his credit report. The information provided allowed him to lodge his complaint with the right representatives who could correct his credit report. Also, knowing he was not dealing with an Advanta employee made no difference to the resolution of his account. Moreover, the allegation that his security clearance was threatened was insufficient to show harm where Dreher obtained his security clearance in eight days.

In its decision, the Fourth Circuit has applied *Spokeo* as intended. To meet the standing test for federal jurisdiction for violation of a statute, a plaintiff must show an injury in fact from the violation of the statute that is concrete and particularized. The concrete injury must be a harm recognized at law or a harm that the statute sought to prevent. Here, if Experian had reported technically correct information, it would not have changed Dreher’s credit report or made the dispute resolution process more efficient. In addition, reliance on mere frustration and inconvenience is not enough in the Fourth Circuit to show a concrete injury.

[1] Later, Dreher agreed to make payments, and he was granted the security clearance.

[2] Experian continued to list the accounts in the name of Advanta at the direction of CardWorks, and the evidence showed that this method of listing the creditor rather than the servicer would be less confusing and assist the consumer in identifying the account.

[3] The class obtained an award of over \$11.7 million based on stipulated damages of \$170 per class member for a class of 69,103 members.

Related People

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