

PUBLICATION

Supreme Court Reshapes Consumer Financial Law with Two Recent Decisions

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The Supreme Court issued two interesting decisions recently that will affect the consumer financial industry. In *Spokeo, Inc. v. Robins*, the Court held that when it comes to Fair Credit Reporting Act (FCRA) violations, standing requires a concrete injury even in the context of a statutory violation. And in *Sheriff v. Gillie*, the Court held that the use of an attorney general's letterhead by a private attorney hired to collect the 'attorney general's debts is not deceptive or misleading, and as such is not in violation of the Fair Debt Collection Practices Act (FDCPA).

Spokeo, Inc. v. Robins

In a potentially important decision for consumer class action cases, the Supreme Court voted 6 to 2 to remand a case involving allegations of violation of the FCRA back to a lower court for a determination of whether the plaintiff had suffered an actual injury. Spokeo.com is a website allowing users to type in someone's name and receive a report containing information about the person. The plaintiff, Robins, claimed the information provided about him by Spokeo.com was incorrect and that providing such incorrect information was a violation of the Fair Credit Reporting Act. Specifically, Robins alleged that the report generated by the website stated he had more education and was better off financially than was accurate. He claimed that this inaccurate information had harmed his job prospects and his credit. The district court had dismissed his case, saying that his claims regarding job prospects and credit were "speculative," but on appeal the Ninth Circuit Court of Appeals reinstated the case, finding that violation of a statute was "sufficient injury to confer standing."

The question before the Supreme Court was whether a mere statutory violation (here, the FCRA) without more is enough for a plaintiff to have standing to bring suit under Article III. In the opinion delivered by Justice Alito (joined by Justices Roberts, Kennedy, Thomas, Breyer and Kagan, with Justices Ginsburg and Sotomayor dissenting), the Court concluded that "Article III standing requires a concrete injury even in the context of a statutory violation. For that reason, Robins could not, for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III."

This is the decision that class action defendants have been waiting for in light of proliferating class actions, especially in the consumer finance area, based on statutory violations without actual injury or damages. Importantly, the decision does not clarify the types or gravity of harm or damage sufficient to satisfy the "injury-in-fact" requirement. Without such clarity, we will have to rely on lower courts to undertake a case-by-case factual analysis before there is any guidance on the parameters of what constitutes "enough" harm to obtain Article III standing.

Sheriff v. Gillie

The Supreme Court ruled 8-0 in the matter of *Sheriff, et al. v. Gillie, et al.*, holding that a private attorney using government letterhead is not in violation of the FDCPA when hired by the state to collect their debts. The Court summarized the issue by stating, "Under Ohio law, overdue debts owed to state-owned agencies and instrumentalities are certified to the State's Attorney General for collection or disposition. Carrying out this responsibility, the Attorney General appoints, as independent contractors, private attorneys, naming them 'special counsel' to act on the Attorney General's behalf. The Attorney General requires special counsel to use

the Attorney General's letterhead in communicating with debtors." Mark Sheriff and Eric Jones, the petitioners in this matter, are collections attorneys who were named 'special counsel' and utilized the attorney general's letterhead in their collection efforts against respondents Hazel Meadows and Pamela Gillie.

The respondents filed a class action suit in Federal District Court "alleging that defendants had, by using the AG's letterhead, employed deceptive and misleading means to attempt to collect consumer debts, in violation of the FDCPA." The Sixth Circuit vacated the District Courts' judgment, finding that the AG's special counsel were not entitled to the FDCPA's state-officer exemption. The Supreme Court's holding only reviewed the issue of whether the act of utilizing the AG's letterhead was false, deceptive or misleading. They held it was not.

The case is not only interesting due to the ramifications on the consumer lending industry, but also its effects on the future direction of the CFPB in regards to that bureau's rule promulgation of a new debt collection rule and any near term enforcement and supervisory actions it takes on in the debt collection space. The CFPB filed an amicus brief with the Supreme Court on behalf of the United States in this matter, which opens by stating that the FDCPA authorizes the CFPB to "prescribe rules with respect to the collection of debts by debt collectors," and that "The CFPB and other federal regulatory agencies are responsible for enforcing the Act through administrative proceedings and civil litigation."

The Bureau then lays out a lengthy argument on their position as to why the actions of the petitioners were in violation of the FDCPA and why their actions were false, deceptive and misleading. Given the fact the Court knows the position of the CFPB, their authority granted under Dodd-Frank and the fact they are in the midst of creating a new rule that governs debt collection, it is surprising that the Court more or less ignored the brief filed by the CFPB in issuing a unanimous opinion that is contrary to the CFPB's arguments. Even more interesting will be what the CFPB places in their final rule on debt collection. Many expect that given the aggressive approach the CFPB takes in its actions, that it will try to legislate around this opinion and include the authorized use of state agencies' letterhead by private attorneys in the collection state debt as an example of a deceptive act.