

Supreme Court Reinforces and Clarifies Rule that Individual “Concrete Injury” is Required to Establish Article III Standing for Claims Seeking Monetary Damages in Both Individual and Class Actions

by James J. Boland

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On June 25, 2021, the United States Supreme Court strongly reinforced the rule that every plaintiff in an individual action, and each class member in a class action, must have suffered a concrete injury-in-fact in order to pursue a claim for monetary damages in federal court, even if the claim is for violation of federal statute and Congress has authorized the recovery of statutory damages. *TransUnion LLC v. Ramirez*, --- U.S. --- (2021). Clarifying language from a prior case, the Court held that a mere risk of future harm does not support Article III standing in a claim for monetary damages.

In *TransUnion*, the district court certified a class of 8,185 plaintiffs asserting claims against TransUnion under the Fair Credit Reporting Act for failing to use reasonable measures to protect the accuracy of their credit files and for defects in certain mailings sent to them by TransUnion. Prior to trial, the parties stipulated that only 1,853 class members had their allegedly defective credit reports provided to third parties during the class period. The remaining 6,332 class members had credit files maintained by TransUnion with defective information, but that information was not disseminated to any third parties. The district court nonetheless held that all class members had standing to assert damages claims against TransUnion, and the court of appeals (Ninth Circuit) affirmed.

The Supreme Court reversed. Analogizing the injuries of the 1,853 class members who had their defective credit reports distributed to third parties to the type of reputational harm that may support a claim for defamation, the Court held that those class members had suffered a concrete injury sufficient to support claims for damages. The Court, however, held that “[e]very class member must have Article III standing in order to recover individual damages.” Applying this rule, the Court held that the remaining 6,332 class members whose reports had not been distributed had suffered no harm or injury and thus lacked standing to assert claims for damages. In doing so, the Court rejected the plaintiffs’ argument, based on language from *Spokeo, Inc. v. Robbins*, 578 U.S. 330, that a risk of future harm is sufficient “injury” to support Article III standing.

The Court held that a plaintiff must demonstrate standing for each claim he or she asserts and each form of relief sought and that while a risk of future harm may be sufficient to support standing for a claim seeking injunctive relief, it does not confer Article III standing in a suit for damages.

TransUnion is significant not only for individual actions seeking relief for statutory violations, but also – and perhaps more so – for class actions. Class actions asserting violations of statutes such as the FCRA often are premised in the recovery of statutory damages that Congress has provided for those violations. In *Spokeo*, the Court held that the existence of a Congressionally-created cause of action does not eliminate the requirement of an Article III injury-in-fact to recover damages. *TransUnion* reinforces that rule, holding that “an injury in law is not an injury in fact” and that only plaintiffs “who have been concretely harmed by a defendants’ statutory violation” may sue in federal court. And under *TransUnion*, that requirement applies to every class member in a purported class action, raising a number of potential issues relating to the ability to obtain class certification in future cases (an issue the Court declined to address).

To learn more about how this decision could impact you, contact James J. Boland at jboland@freeborn.com or 312-360-6548.

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Jim has extensive experience and has represented a variety of corporations, businesses and professional firms in matters involving securities fraud, reinsurance (life & health, property & casualty), antitrust, accountant liability, consumer protection, shareholder and derivative disputes, mergers and acquisitions disputes, including post-closing disputes, and a variety of other commercial matters. He also has extensive experience in class action litigation, representing corporations and businesses in matters involving securities fraud, antitrust, residential and commercial mortgage practices, commercial leasing and other retail sales and marketing practices, and has experience in SEC and other governmental investigations.

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