

The Seventh Circuit Smacks Down "No Harm" Class Action

SmithAmundsen Class Action Alert
January 2017

The Supreme Court's decision in *Spokeo v. Robins* resulted in numerous federal district courts dismissing consumer class action lawsuits for lack of standing (you can read more about the *Spokeo* decision [here](#)). These lawsuits usually involve the violations of state or federal statutes without an obvious showing that the plaintiff suffered any harm or injury. Now, the Seventh Circuit Court of Appeals has weighed in, recently dismissing two lawsuits based on the Supreme Court's decision.

In *Meyers v. Nicolet Restaurant of De Pere*, 843 F.3d 724 (7th Cir. 2017), the plaintiff complained that his credit card expiration date appeared on the receipt he received from the defendant's business, in violation of the Fair and Accurate Credit Transactions Act (FACTA). FACTA allows for the recovery of statutory damages between \$100 to \$1,000. The plaintiff, however, did not allege that his credit card information was stolen, or that he otherwise suffered any harm from the FACTA violation. Under these circumstances, the Seventh Circuit, relying on *Spokeo*, dismissed Meyers' FACTA claim for lack of standing, holding that "a violation of a statute, completely divorced from any real-world harm is insufficient to satisfy Article III's injury in fact requirement."

Then, this past week, the Seventh Circuit faced the standing question again in *Gubala v. Time Warner Cable*, 2017 WL 243343 (7th Cir. 2017). Gubala alleged that Time Warner retained his personal information longer than was allowed under the Cable Communications Policy Act. Like the plaintiff in *Meyers*, Gubala could not point to any harm he suffered beyond the technical violation of the statute. Accordingly, the Seventh Circuit affirmed dismissal of the case for lack of standing.

With these two decisions, the Seventh Circuit has signaled that it is unwilling to allow plaintiffs to hold defendants hostage with so-called "no harm" class action lawsuits seeking millions of dollars. The defendants, relying on *Spokeo*, were able to secure dismissal from federal court at the outset without incurring significant litigation costs. However, the practical result of these decisions is that "no harm" statutory claims may be litigated in state court, which will be subject to state court standing rules.

What is also clear from these decisions is that *Spokeo* has provided new avenues to combat class action lawsuits that were not available to defendants before.

PROFESSIONALS

John Ochoa
Partner

RELATED SERVICES

Class Action



The
Seventh
Circuit
Smacks
Down "No
Harm" Class
Action