



News Release

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DRI Files Amicus Brief with Supreme Court in *Spokeo, Inc. v. Robins*

Harm Alleged in Inaccurate Personal Information Distributed by People Search Engine

CHICAGO – (June 19, 2014)—DRI – The Voice of the Defense Bar has filed an amicus brief with the Supreme Court in the case of *Spokeo Inc. v. Robins*, a case that turns on the issue of “harm.” The brief was submitted by DRI’s Center for Law and Public Policy.

Spokeo, Inc., operates a people search engine that aggregates publicly available information from phone books, social networks, marketing surveys, real estate listings, business websites, and other public sources and displays the results of searches in an easy-to-read format. Plaintiff Thomas Robins brought a putative class action against Spokeo, in the Central District of California, alleging that Spokeo is a “consumer reporting agency” that issues “consumer reports” in violation of the Fair Credit Reporting Act. Robins alleged that the search results for him included inaccurate information indicating that he has more education and professional experience than he actually has, that he is married (although in fact he is not), and that he is better situated financially than he really is. Robins alleged that the misinformation hurt his “employment prospects.” The district court ultimately dismissed the case for lack of a showing of harm.

The Ninth Circuit reversed. The court of appeals held that the “creation of a private cause of action to enforce a statutory provision implies that Congress intended the enforceable provision to create a statutory right,” and that “the violation of a statutory right is usually a sufficient injury in fact to confer standing.” Because “the statutory cause of action does not require a showing of actual harm when a plaintiff sues for willful violations,” the court reasoned, actual harm was unnecessary to establish injury in fact. Thus, the court of appeals concluded, “alleged violations of Robins’ statutory rights are sufficient to satisfy the injury-in-fact requirement of Article III.”

The Ninth Circuit held that the plaintiff had sustained injury-in-fact under Article III by virtue of the bare statutory violation—here the transmission of allegedly inaccurate personal information in violation of FCRA. The importance of the issue sweeps far beyond FCRA because so many federal and state statutes

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provide statutory damages that arguably may be recovered in the absence of any showing of actual harm. And the court of appeals' related holding that causation is effectively automatic in statutory damages cases has significant implications for class certification, which can raise a defendant's exposure in statutory damages cases to an annihilative level.

At issue here is whether the Constitution's Article III requirement of an injury-in-fact can be satisfied by a mere injury-in-law that does not result in any actual harm to the plaintiff.

The DRI brief maintains that "by holding that a plaintiff bringing suit under the FCRA satisfies Article III's injury-in-fact requirement by virtue of the bare statutory violation, the Ninth Circuit's decision enables individuals who have suffered no 'actual injury' to enter federal courts through the 'back door,' a practice which this Court has expressly disapproved."

Author of the DRI brief, Mary Massaron Ross of Plunkett Cooney in Bloomfield Hills, MI, is available for comment through the DRI Communications Department.

The full text of the brief can be found [here](#).

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About DRI – The Voice of the Defense Bar

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