

SCHWARTZ & BALLEN LLP

1990 M STREET, N.W. • SUITE 500

WASHINGTON, DC 20036-3465

WWW.SCHWARTZANDBALLEN.COM

TELEPHONE
(202) 776-0700

FACSIMILE
(202) 776-0700

MEMORANDUM

May 18, 2016

To Our Clients and Friends

Re: Supreme Court Determines FCRA Requires Plaintiffs to Demonstrate Harm

In a case involving an alleged violation of the Fair Credit Reporting Act (FCRA), the U.S. Supreme Court held that in order to have standing, the plaintiff must demonstrate that he or she was harmed by the company's action.

The FCRA requires consumer reporting agencies to follow reasonable procedures to assure the maximum possible accuracy of consumer reports. A person who willfully fails to comply with the requirement is liable to the individual to whom the information relates for either actual damages or statutory damages of \$100 to \$1,000 per violation. Spokeo, Inc., is a people search engine that searches databases to gather personal information about individuals and provide it to users such as employers wanting to evaluate prospective employees. The plaintiff alleged that the personal profile prepared by Spokeo contained inaccurate information, and filed a class action contending that Spokeo willfully failed to comply with the FCRA's requirements.

In a 6-2 opinion authored by Justice Alito, the Court stated that in order to have standing, a plaintiff must demonstrate (1) an injury in fact, (2) fairly traceable to the conduct of the defendant, and (3) likely to be redressed by a favorable judicial decision. The injury-in-fact requirement requires the plaintiff to show that he or she suffered an invasion of a legally protected interest that is concrete and particularized, not conjectural or hypothetical. Concreteness requires an actual injury. An injury is particularized if it affects the plaintiff in a personal and individual way.

The Court stated a plaintiff does not automatically satisfy the injury-in-fact requirement whenever a statute grants a right and purports to authorize a suit to vindicate it. Rather, standing requires a concrete injury even in the context of a statutory violation. The Court concluded that the plaintiff cannot satisfy the requirements for standing by simply alleging a procedural violation of the FCRA; he or she must show actual harm.

A copy of Court's opinion is available on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, or Heidi Wicker at (202) 776-0700.