

Supreme Court Precludes Unharmed Class Members from Recovering for Technical Statutory Violations

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By William Thomson

On Friday, June 25, the Supreme Court [issued an important decision in *TransUnion LLC v. Ramirez*](#), limiting the ability of class action plaintiffs to seek huge damages awards for mere technical violations of statutes. Although the case arose under the Fair Credit Reporting Act (FCRA), its impact is likely to be substantially broader, giving defendants—particularly those sued under consumer protection statutes—another arrow in their quiver for fighting off class actions.

In *TransUnion*, 8,185 class members sued credit reporting agency TransUnion, claiming it had wrongly identified them as being on the Treasury Department’s OFAC list of terrorists, drug traffickers and other serious criminals. For 1,853 of these class members, TransUnion provided credit reports to potential creditors identifying the class members as being on the OFAC list. For the remaining 6,332 class members, however, although TransUnion wrongly identified them as being on the OFAC list, it never actually published that information to anyone. Thus, for those class members, the Court was left to resolve a legal *koan*: “if inaccurate information falls into a consumer’s credit file” but is never disseminated, “does it make a sound?” In other words, is “the mere existence of a misleading OFAC alert in a consumer’s internal credit file” a sufficient basis for the consumer to sue?

Had the Court looked only to the text of the FCRA, it might have answered “yes”: the FCRA requires credit reporting agencies to “follow reasonable procedures to assure maximum possible accuracy,” and imposes significant statutory damages for each failure to comply, regardless of harm to the plaintiff. Applying the constitutional principle of standing, however, the Court answered with a resounding “no.” The Court explained that a plaintiff—even an unnamed plaintiff in a class action—must show a tangible harm in order to sue: “No concrete harm, no standing.” The mere fact that a defendant has violated a right conferred on a plaintiff by statute does not show that the plaintiff has been *concretely* harmed: an “injury in law” is not the

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same thing as an “injury in fact.” Only the latter gives a plaintiff standing to sue.

Ultimately, the Court held that the 1,853 class members TransUnion identified as possible criminals to potential creditors *were* concretely harmed and could sue. The 6,332 class members whose (inaccurate) status as criminals was never disclosed to anybody, however, were *not* concretely harmed, and could not sue. The Court additionally held that class members were not harmed by having been mailed information about their credit files in an improper format. As the Court explained, there was no evidence that any class members other than the named plaintiff “were confused, distressed, or relied on the” improperly formatted information in any way.

The Court’s decision likely saved TransUnion from tens of millions of dollars in damages (the total award to the class, before the Supreme Court’s ruling, was \$40 million). More importantly, it represents another instance of the Court stepping in to limit the plaintiff’s bar’s ability to seek huge damages based on statutory penalties without any accompanying injury. *TransUnion* makes clear that the absence of a concrete harm to *each* class member is a basis to deny recovery. The impact is likely to be significant, particularly in the consumer protection context: the Court’s focus on the absence of evidence that class members relied on improper information could, for example, provide a defense in the false-advertising context. *TransUnion* also provides a further reason for class action defendants to remove cases to federal court: the Constitution’s limits on standing, which underpinned the *TransUnion* decision, do not apply in state court.

CONTACT

William D. Thomson

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