Landmark Ruling in TransUnion v. Ramirez: For Damages Suits, “Risk of Future Harm” No Longer Supports Article III Standing in Federal Court

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The Supreme Court in *TransUnion LLC v. Ramirez* on June 25, 2021 dramatically reorganized and narrowed the Article III landscape for constitutionally cognizable damage suits in federal court. Suits for damages based solely on “risk of future” harm, the Court ruled, are not “Cases” or “Controversies” under the U.S. Constitution and no longer meet what were long thought to be minimal “injury in fact” requirements for a plaintiff to establish standing to sue.

Describing the new standard as “No concrete harm, no standing,” in the 5-4 majority opinion authored by Justice Kavanaugh, the Court overturned a $60 million jury verdict (later reduced to $40 million) in favor of a certified class of 8,185 individuals claiming injury from TransUnion’s process for flagging individuals as possible terrorists, drug traffickers or other serious criminals in the issuance of credit reports governed by the Fair Credit Reporting Act (FCRA). The process purported to look for and report “matches” to names appearing on the Office of Foreign Assets...
Control (OFAC) list but apparently yielded erroneous “possible” hits as to the 8,185 members of the class (none of whom were actually on the OFAC list).

The Court ruled that concrete harm and standing had been established only as to the 1,853 individuals whose flawed credit reports had actually been requested by TransUnion clients (car dealerships, landlords and the like) and sent to them. As to the remaining individuals, the Court held that misleading and injurious information in a credit report that never “went anywhere,” i.e., was never sent out and never even known to the affected individual, did not constitute concrete harm, on either a current or “risk of future harm” basis. Turning from damage claims to injunctive claims, however, the Court came out the other way, ruling that “risk of future harm” could in some circumstances support federal court jurisdiction over injunctive claims.

Justice Thomas, joined by Justices Breyer, Sotomayor and Kagan, dissented, outlining various alleged “willful” lapses by TransUnion that led to the types of actual and imminent reputational and other harms purportedly suffered by the class, harms that Congress sought to address in the FCRA and was lawfully empowered to address by the Constitution. Justice Thomas pointedly took issue with the majority’s departure from standing principles enunciated in Spokeo, Inc. v. Robins, 578 U.S. 330 (2016), and the majority’s apparent rejection of the “public rights” versus “private rights” framework that Justice Thomas offered in his concurrence in Spokeo, a framework that courts and commentators have increasingly adopted and approved in recent years.

Innumerable takeaways and practice pointers can be gleaned from the Court’s decision, including what appears to be quite a bit of skepticism of the class action model for addressing large numbers of purportedly “no injury” claims and the Court’s increased concern about future legislative “over-reach” by Congress that could inundate the federal courts. The Court postulated, for instance, a hypothetical federal law that could allow anyone in the United States, “injured” or not, to sue polluters in federal court for unclean air or water. Also noteworthy, on an implicit basis in the Court’s opinion and expressly stated by Justice Thomas in dissent, is the almost certain increased attractiveness of a state court forum for vindication of individual or class-wide rights once believed to be actionable under Spokeo but no longer so under TransUnion. The upshot of the Court’s ruling suggests a new and challenging legal environment where Congress may pass laws creating rights and remedies under federal law that can be enforced only by private lawsuits in state court because Article III standing does not exist.

It remains to be seen whether this admittedly “bright line” ruling will quell the ongoing confusion and discord in the federal courts concerning standing to sue and Article III, in the class action context or otherwise. The decision certainly has the potential to strengthen defense arguments for early dismissal in data breach class actions and other scenarios where concrete harm can be difficult to establish. Much will also turn on whether and how Congress and the state courts will proceed in view of the jurisdictional vacuum that appears to have been created in federal court for “no-injury” class actions and claims.

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