

MICHIGAN LAWYERS WEEKLY

How has ‘Spokeo’ been applied in federal court? *Attorneys look at effects of U.S. Supreme Court case*

By: Thomas Franz February 1, 2018

It’s been over a year since the U.S. Supreme Court ruled in *Spokeo, Inc. v. Robins*, and two Michigan attorneys said the result of that decision has been a mixed bag.

The decision stated that in order to file a lawsuit, a plaintiff must allege a concrete injury, and not simply a technical violation.



Jesse L. Roth and Kathleen H. Klaus, defense and insurance coverage attorneys for Maddin, Hauser, Roth & Heller PC in Southfield, said federal district courts have been inconsistent in applying the *Spokeo* decision, while federal circuit courts seem to be applying it as intended.

“Our experience is that district court judges don’t really see it as a game changer. The appellate courts have taken a broader view of it,” Klaus said.
‘Spokeo’ case

The actual Spokeo case involved a plaintiff alleging injury due to incorrect information being displayed about him on the Spokeo website.

Spokeo is a search engine where users can look up their own name or names of others to find out location, phone number, family members and occupation information.

In this case, the plaintiff said his Spokeo profile said he had a better job and more income than he actually did.

"There's a statute, the Fair Credit Reporting Act, that requires a credit reporting agency, and Spokeo fits that definition, that a credit reporting agency has to do its due diligence in order to prevent dissemination of inaccurate information," Roth said. "The plaintiff claimed they didn't do their due diligence. He got an attorney and filed suit."

Because the plaintiff did not suffer a concrete injury as a result of that publishing, the court determined that he did not have standing to bring a lawsuit in federal court, Roth said.

"*Spokeo* came along and said that in order for federal courts to have jurisdiction over any claims, there's a constitutional requirement that plaintiffs have standing to bring suit and the standing includes a requirement that the plaintiff has suffered a concrete injury, an actual concrete injury," Roth said.

Effects

Klaus and Roth said the results of the case have not been as consistent as they have expected and hoped. While federal circuit courts have been more willing to apply it broadly, federal district courts have varied widely in their application.

"I think the way the district courts have gotten around it is to say this is just the pleadings, let's let the facts develop and see what's going to happen. To me, I think it's a cop out, it allows them to avoid the core issues that *Spokeo* told them they had to address," Klaus said.

Roth added that there is a niche in consumer litigation where plaintiffs find “ticky tack” violations of consumer statutes and will file suit in order to receive a small award.

Beyond *Spokeo*, Roth pointed out one case in which a plaintiff alleged injury because the expiration date of his credit card was printed on a restaurant receipt.

Another example involved a data breach at an insurance company where hackers obtained personal information. However, he has argued that since no fraudulent charges were made as a result of the data breach, no harm occurred.

“Some of the Courts of Appeals have come out on either side of this issue. The Sixth Circuit has said the risk of suffering an actual injury is enough that when your data is stolen, the risk of injury is significant enough to have standing to sue, but other courts have said it’s not,” Roth said. To further promote the intentions of the *Spokeo* decision, Klaus said they are hoping for a case that is clearly ripe for an application of the Supreme Court’s finding.

“I think it would have to be decided on a motion for summary judgment instead of a motion to dismiss. It would be one where we’re able to demonstrate that the plaintiffs had suffered absolutely no injury, they may have alleged some kind of injury, but absolutely no injury other than a violation of this statutory right with no injury other than that,” Klaus said. As it affects businesses, Roth and Klaus believe that in the long run, the *Spokeo* case will help prevent needless litigation, thereby lowering the cost of doing business.

“That’s our frustration. We believe *Spokeo* was designed to stop these suits, this blackmail litigation. I think *Spokeo* is saying no, federal courts aren’t designed to adjudicate those kind of technical violations, it’s meant to address injuries,” Klaus said. “If these people don’t have an injury, even if there was a technical violation of the statute, you can’t sue in federal court, that’s what *Spokeo* was supposed to do, but it’s not how the district courts have been applying it.”