The Supreme Court's Spokeo Decision: Less Than Meets the Eye

By Charles Delbaum

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The article begins with:

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1. Standing in a Broad Perspective

Well established Supreme Court doctrine dictates that a plaintiff must have standing to bring a claim, and the plaintiff must "suffering something" to bring the claim. For e.g., Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–561 (1992).

Standing, in turn, has three elements, as summarized by Spokeo: "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. The plaintiff, in other words, must have standing in the litigation, as a legal threshold, to establish (1) that he has "suffered" an injury in fact, (2) that the injury is "fairly traceable" to the challenged conduct, and (3) that it is "likely to be redressed by a favorable judicial decision.""

The standing requirement serves as a filter for determining whether a plaintiff is entitled to introduce evidence that meets the minimum Article III standing requirements. The Court gave as examples:

"The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. The plaintiff, in other words, must have standing in the litigation, as a legal threshold, to establish (1) that he has "suffered" an injury in fact, (2) that the injury is "fairly traceable" to the challenged conduct, and (3) that it is "likely to be redressed by a favorable judicial decision.""

Moreover, particularly, when types of false information can work concrete harm? While the Court did not answer this, the Court pointed out in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any more--in fact an inaccurate zip code can lead to higher insurance rates or being excluded from a certain school district.

2. The Ninth Circuit Didn't Adequately Analyze Concreteness

In Spokeo, the Supreme Court held that the Ninth Circuit misinterpreted the concreteness requirement of Article III standing to determine whether a putative plaintiff's alleged violation of the FCRA's provisions regarding consumer reports. While standing is not an element of the FCRA's procedural requirements, the Ninth Circuit erred by applying a concreteness requirement to the alleging false information that Congress had decided should be made public, citing to Public Citizen v. Department of Justice.

3. Intangible Harm Can Be Concrete

The majority opinion provided guidance regarding when harm is concrete, a term of art, but broke no new ground. Concrete harm, it said, is "a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts," as recognized in many cases by the Supreme Court. The Court made clear that "intangible injuries can be concrete in some circumstances," and "intangible injuries can be concrete where those intangible injuries are separable from the alleged violation.

4. More Particularly, What Types of False Information Can Work Concrete Harm?

The Court pointed out that "the doctrine of standing requires a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts," and that "intangible injuries can be concrete in some circumstances where those intangible injuries are separable from the alleged violation."

5. In the Case Before It

The Court also made clear that "Congress had decided that false information that a plaintiff may have been subjected to must be made public, and it is the plaintiff's interest in obtaining that information that must be separately harm." Thus, the Court's decision means that intangible harms--which included the case before it--can be concrete in some circumstances to constitute injury in fact. In other words, a plaintiff may have been subjected to must be made public, and it is the plaintiff's interest in obtaining that information that must be separately harm. Thus, the Court's decision means that intangible harms--which included the case before it--can be concrete in some circumstances to constitute injury in fact.