

No Evidence of Injury Required: Spokeo Loses Appeal in FCRA Claim

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You may already know that **Fair Credit Reporting Act (FCRA) litigation** has picked up some steam over the past year. While recent class actions continue to grab the headlines, an appellate ruling in a four-year-old case is causing a buzz.

Injury In Fact?

Spokeo makes an encore appearance here in [BTW](#) as the defendant in a case that has been festering in the 9th Circuit Court of Appeals. It's an FCRA case, and the issue is damages.

[The last time we checked in with Spokeo](#), the company was losing the battle with the Federal Trade Commission (FTC) over whether or not it was a consumer reporting agency that could be held accountable for providing employment reports under the FCRA. The company paid a substantial fine (\$800K) for its trouble, and was sued for allegedly reporting misinformation to employers and recruiters on its website.

A complaint, originally brought by Thomas Robins on behalf of a class of similarly situated individuals, alleged that inaccurate information on Spokeo's website was a "willful" violation of the FCRA. Spokeo was initially successful in arguing that the plaintiff's claims were without merit since Robins, while admittedly unemployed, had not suffered any "actual or imminent harm"—a required element of a cause of action under the statute. [Read more about that decision almost two years ago here.](#)

At long last we have a decision on the appeal. In a surprising decision, the appellate court overturned the trial court, lowering the threshold of actual damages for future FCRA claims.

How low, you ask?

How about NO damages? **Zero. Zip.** It doesn't get much lower than that.

The Facts About Mr. Robins

Robins alleged that his Spokeo profile included a laundry list of inaccuracies: wrong age, wrong marital status, and wrong photo. Not all of the information was negative or even unflattering. Interestingly, the website reported that he had a graduate degree (he did not), that his economic health was "very strong" and that his "wealth level" was in the "top 10%"—all false, according to the plaintiff.

Call me crazy, but if I found out that a website was misleading the world into thinking I was a member of the highly paid, elite, upper echelon of society, I might not complain. But Robins made a good point—while being financially stable is not considered a negative (at least by most people), it doesn't exactly help your job prospects to have a web site touting your great wealth. The unemployed Robins claimed that the inaccurate information was costing him jobs, "causing actual harm to Plaintiff's employment prospects" as well as "anxiety, stress, concern and/or worry about his diminished employment prospects."

The Appellate Decision

Spokeo argued throughout the litigation that Robins had no claim under the FCRA because he made no showing of actual harm. But the Appellate court found otherwise. It held that because the allegations were for willful violations and statutory damages, and statutory causes of action do not require a showing of actual harm when a plaintiff sues for willful violations, no actual harm was needed.

The court cited the statute's language at 15 U.S.C. § 1681n(a):

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to . . . damages of not less than \$100 and not more than \$1,000 . . .").^[1]

The court's decision hinged on the claim of willful violations and a claim for statutory damages only. It completely sidestepped the issue of whether Robin's alleged harm to his employment prospects or related anxiety could be sufficient injuries in fact. Robins and Spokeo now go back to the drawing board—in district court.

Word to the wise: This case is sure to add fuel to the fire for FCRA claims, opening the door for additional plaintiffs making claims for willful violations without having suffered any actual harm or injury in fact.

The advertisement features a blue and white color scheme. On the left, the text reads: "What Should You Do When Your Candidate Has a Criminal Record? Download our Guide for 5 Key Steps to Compliance" followed by a green button that says "Download Our Guide Here". On the right, there is a preview of the guide's cover, which includes the title "Keep It Legal! 5 Steps to Compliance When Your Candidate Has a Criminal Record" and a list of five numbered steps.

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