

# Alert

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## Federal Court Standing Decision May Spark Trend In Consumer Protection Action Filings In State Court

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#### Article III Standing

The U.S. Supreme Court's 2016 decision in *Spokeo Inc. v. Robins* was a game-changer. That decision single-handedly raised the bar for a plaintiff alleging a violation of a consumer protection statute such as the Fair Credit Reporting Act. The Supreme Court held that the standing principles of Article III mean that a plaintiff may not assert a bare, technical violation of a consumer protection statute unless an injury-in-fact exists – i.e., an injury or harm that is concrete and particularized.

In the years following *Spokeo*, courts across the country readily applied the *Spokeo* principles to certain consumer protection statutes (such as the Fair Credit Reporting Act) but struggled to apply them to others (such as the Fair Debt Collection Practices Act). Oddly, one recent FCRA matter resulted in the plaintiff arguing *against* his own Article III standing.

For a crash course regarding Article III standing decisions in FDCPA cases, [read more here](#).

As demonstrated in a recent case, now that application of the *Spokeo* principles is becoming more commonplace across all consumer protection actions, it is sparking a trend toward plaintiffs pursuing more state court actions.

#### Daye v. GC Services Limited Partnership

On September 23, 2022, the United States District Court for the District of New Jersey issued an opinion so biting that the plaintiffs' bar across the country should take note.

In *Daye v. GC Services Limited Partnership*,<sup>1</sup> the plaintiff alleged that debt collection letters regarding his unpaid student loans were misleading, in violation of the FDCPA. Notably, the plaintiff failed to allege that he even read the letters – a fact the court immediately noted: “What did Daye do in response to receiving the Letter in February 2020? **Nothing at all**. Indeed, based on the complaint, it does not appear he even read the letter.”<sup>2</sup>

The court further noted that, if properly applied, the injury-in-fact requirement would likely be a “bloodbath for FDCPA claims.”<sup>3</sup>

Lest the plaintiff thinks he could simply amend to allege he read the letter, the court quickly shut that possibility down: “To be sure, even if Daye had read the offending letter, informational harm alone fails to provide standing without more.”<sup>4</sup> Informational harm, also sometimes referred to as “informational confusion,” the court explained, is when a plaintiff alleges that they read a letter that technically violates the terms of the FDCPA, and the content of the letter “confused” them.<sup>5</sup> The court concluded that to satisfy Article III standing requirements, Daye must allege an actual, concrete injury – i.e., some consequence that stemmed from reliance on the letter, some adverse occurrence, or some parallel harm caused by a third party receiving and reviewing the letter.<sup>6</sup>

#### Public Policy and The Trend Towards State Court Lawsuits



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In a Hail Mary attempt to save his claims, Daye argued the court should permit his claims to move forward simply because the FDCPA is a federal statute, and public policy should permit that claim to be pursued in federal court rather than force him to litigate in state court. The court rejected this argument outright, noting that it is required to follow precedent, and existing precedent requires a showing of injury-in-fact to establish standing.

While Daye's suggestion that the application of the *Spokeo* principles will force plaintiffs into state courts was insufficient to move the court from its holding, it does highlight a recent trend that I have noticed in my practice and across the country. Due to the perceived heightened complexity and cost of federal court actions over state court actions, plaintiffs preferred bringing these consumer protection claims in federal court thinking that it motivated defendants to settle early. By clamping down on federal court standing, these cases will soon be forced into state courts where they can be disposed of via dispositive motions and/or low dollar value settlements.

<sup>1</sup> 2022 WL 4449381 (September 23, 2022)

<sup>2</sup> *Id.* at \*1 (emphasis added).

<sup>3</sup> *Id.* at \*2.

<sup>4</sup> *Id.* at \*3

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

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