

When Technicalities Are (And Are Not) Associated with Concrete Harm: The Spokeo Analysis as Applied in Long v. SEPTA

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In the latest application of the Supreme Court's 2016 *Spokeo* decision, the Third Circuit analyzed two alleged technical violations of Fair Credit Reporting Act (FCRA) and reached different conclusions with respect to the plaintiffs' right to bring claims. After conducting a fact-intensive inquiry into the specific allegations made by prospective employees, the court held that an employer's failure to provide the prospective employees with a copy of their background check did give rise to an injury, while the failure to provide the statutorily required notice of rights did not.

First, the plaintiffs alleged that defendant failed to provide them with copies of their consumer reports before taking an adverse employment action. The defendant argued that, because plaintiffs failed to allege that the consumer reports were inaccurate, they bore no injury in not having received copies of their consumer reports. The court disagreed—it held that a consumer's interests in the reports was broader than the interest in correcting inaccurate information, and that a consumer also has an interest in providing the context necessary to ensure that even accurate information is appropriately considered. Therefore, the court held, plaintiffs suffered a concrete injury by not having the opportunity to contextualize the negative information in their consumer reports.

Second, the plaintiffs alleged that defendant failed to provide them with the FCRA-mandated notice of rights. Distinguishing this case from at least one other case involving notice of rights provisions, the court noted that the fact of plaintiffs filing suit was evidence enough that they were sufficiently familiar with their FCRA rights. Because plaintiffs would not have behaved any differently if they had received the notice of rights, the court held that they lacked standing to assert a claim based off of the failure to provide a notice of rights. In the terms of *Spokeo*, the notice-of-rights claim only alleged a "bare procedural" violation.

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