

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On February 13th, U.S. Supreme Court Justice Antonin Scalia unexpectedly passed away and his absence on the bench could have an important impact on upcoming cases. Specifically, Scalia's vote could have been the tipping point that would reverse the Ninth Circuit's ruling in *Spokeo, Inc. v. Robins*. According to Robins' original complaint, Spokeo violated that Fair Credit Reporting Act (FCRA) by allegedly publishing inaccurate information about Robins on the company's search engine. The Ninth Circuit ruled in favor Robins, concluding that plaintiffs did not have to demonstrate actual harm in order to have standing. During the oral arguments before the Supreme Court in November, it was clear that the Court was divided on whether to uphold the Ninth Circuit ruling, with Justice Anthony Kennedy in the middle of the split vote. However, without Scalia's vote, there would be no conservative majority and the Ninth Circuit ruling could be confirmed by an evenly divided court. According to many legal experts, the question of plaintiffs' standing in this case has important implications for businesses, with one attorney stating, "This is a question that is becoming more significant across the country, with pretty substantial businesses facing these issues, and a split will result in them being stuck in the same spot that they have been in for years." However, there is still a possibility that the Court postpones the case for re-argument next term in order for consideration from a full bench of justices. (*Spokeo Inc. v. Thomas Robins et al.*, case number 12-1339, in the *Supreme Court of the United States*.)
- On February 18th, U.S. District Judge Robert E. Payne rejected a motion for summary judgment filed by CoreLogic National Background Data LLC (CoreLogic) in the proposed class action lawsuit accusing the company of violating the Fair Credit Reporting Act (FCRA). According to the plaintiff, his job offer was rescinded based on inaccurate information provided by a search result from CoreLogic. CoreLogic, however, argued that the FCRA claims do not apply to it because it does not provide search results on specific people and therefore

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does not provide “consumer reports.” CoreLogic also argued that it is not governed by the FCRA because it does not provide information directly to employers, instead selling information from its database to background screening companies who then sell background checks to employers. The judge rejected CoreLogic’s arguments, concluding, “It would be illogical and unrealistic to conclude that the purpose for which a report was furnished depends entirely on whether the report goes through a ‘middleman.’ Under [CoreLogic’s] proposed reading, any credit reporting agency could relieve itself of all responsibility under the FCRA merely by ensuring that its reports moved through an intermediary.” (*Tyrone Henderson and James O. Hines Jr., on behalf of themselves and others similarly situated v. CoreLogic National Background Data LLC f/k/a National Background Data LLC, case number 3:12-cv-00097, in the U.S. District Court for the Eastern District of Virginia.*)

- On February 18th, an Illinois federal judge denied Sprint Corp.’s (Sprint) motion to dismiss a putative class action accusing the company of violating the Fair Credit Reporting Act (FCRA). According to the original complaint, Sprint presented job applicants with unlawful background check disclosure forms that said applicants were required to give the company access to private data held by the government, healthcare providers, and schools. Sprint moved to dismiss the case based on lack of consumer harm. However, the judge denied Sprint’s motion and ruled that, “Congress enacted the FCRA to protect consumer control over personal information the exposure of which, though often necessary in the modern economy, can result in a significant invasion of privacy and can jeopardize a consumer’s personal, reputational and financial well-being. The statute provides that when a person or entity willfully violates a mandate of the FCRA that is designed to protect these interests, the aggrieved consumer may recover statutory damages.” (*Rodriquez Jr. v. Sprint Corp et al., case number 1:15-v-10641, in the U.S. District Court for the Northern District of Illinois.*)
- On February 22nd, Donna Seymour, the U.S. Office of Personnel Management (OPM) Chief Information Officer (CIO), announced that she is retiring. In her statement, Seymour said, “Leaving OPM as this time was a very tough decision for me, but I feel it is in the agency’s best interest that my presence does not distract from the great work this team does every single day for this agency and

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the American people.” Seymour’s announcement came just two days before she was scheduled to testify before the House Oversight and Government Reform Committee about the agency’s massive data breach that exposed the personal information of nearly 21 million people. In a statement on Seymour’s resignation, House Oversight and Government Reform Committee Chair Jason Chaffetz (R-Utah) said, “On her watch, whether through negligence or incompetence, millions of Americans lost their privacy and personal data. The national security implications of this entirely foreseeable breach are far-reaching and long-lasting. OPM now needs a qualified CIO at the helm to right the ship and restore confidence in the agency.” (<http://thehill.com/policy/cybersecurity/270305-top-opm-tech-official-resigns-under-pressure>)

- On February 26th, a federal judge denied TransUnion LLC’s (TransUnion) motion for sanctions against a man and his attorneys accused of “hijacking” a mediation attempt in the Fair Credit Reporting Act (FCRA) case against TransUnion and JPMorgan Chase & Co. (JPMorgan). The plaintiff’s original complaint stems from an allegedly unlawful credit check provided by TransUnion based on information from JPMorgan. The plaintiff also alleged that the companies did not adequately investigate his report when he disputed it. However, TransUnion claims that during mediation, the plaintiff’s wife deceived the judge by serving as representation without revealing her real name or relationship to the plaintiff. TransUnion also alleges that the plaintiff’s wife refused to sign the mediation agreement in order to conceal her identity, which the company argues could undermine the mediation’s confidentiality. The judge denied TransUnion’s motion for sanctions against the plaintiff and his representation, but did not issue an opinion. (*McDonough v. JPMorgan Chase Bank NA, et al., case number 4:15-cv-00617, in the U.S. District Court for the Eastern District of Missouri.*)

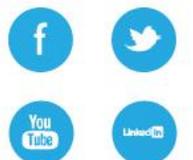
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