

Banking and Finance Law Daily Wrap

Up,FAIR CREDIT REPORTING—7th Cir.: Card expiration date on receipt caused consumer no concrete injury,(Dec. 14, 2016)

By [Richard A. Roth, J.D.](#)

The Supreme Court's [Spokeo, Inc. v. Robins](#) decision continues to wreak havoc on consumers' efforts to seek statutory damages for violations of consumer financial and privacy protection laws. According to the U.S. Court of Appeals for the Seventh Circuit, a consumer could not show any concrete injury from a restaurant's inclusion of his credit card expiration date on a receipt, so he had no standing to sue under the Fair and Accurate Credit Transactions Act ([Meyers v. Nicolet Restaurant of de Pere, LLC](#), Dec. 13, 2016, Manion, D.).

According to the Seventh Circuit, the facts were undisputed. The consumer had a meal at the Nicolet Restaurant of de Pere and, upon paying, saw that the receipt included his credit card expiration date. Believing this violated the FACTA ban on including expiration dates or more than the last five digits of a card number, he filed a class action against the restaurant.

The court took the opportunity to mention that this was not the consumer's first foray into FACTA enforcement. His earlier effort to sue the Oneida Tribe of Indians of Wisconsin for the same claimed violation was rejected based on the tribe's sovereign immunity (see [Meyers v. Oneida Tribe of Indians of Wisconsin](#), discussed at [Banking and Finance Law Daily](#), Sept. 8, 2016). A request for Supreme Court review of that decision recently was filed as [Meyers v. Oneida Tribe of Indians of Wisconsin](#) (Dkt. No. 16-745).

Concrete injury requirement. In *Spokeo*, a consumer's suit claiming that publication of inaccurate personal information violated the Fair Credit Reporting Act, the Supreme Court emphasized that a concrete injury was an essential part of standing to sue under Article III of the Constitution. In the absence of a concrete injury—some actual harm or at least appreciable risk of harm—standing does not exist.

Congress can pass a law and create a private right to sue if that law is violated, the Seventh Circuit explained, but a consumer has standing to sue in federal court only if that violation results in a concrete injury.

No concrete injury. In this case, displaying the credit card expiration date on the receipt did not cause the consumer a concrete injury, the court decided. The consumer noticed the problem immediately, and nobody else saw the receipt, the court pointed out. "In these circumstances, it is hard to imagine how the expiration date's presence could have increased the risk that Meyers' identity would be compromised," according to the opinion.

"In sum, we hold that without a showing of injury apart from the statutory violation, the failure to truncate a credit card's expiration date is insufficient to confer Article III standing," the court made clear.

The case is [No. 16-2075](#).

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Companies: Nicolet Restaurant of de Pere, LLC

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