

[Banking and Finance Law Daily Wrap Up, TOP STORY—11th Cir: Rehearing of credit card truncation decision granted, \(Oct. 7, 2019\)](#)

Banking and Finance Law Daily Wrap Up

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By [J. Preston Carter, J.D., LL.M.](#)

The Eleventh Circuit will reconsider its decision that "an identifiable trifle" of an increased risk of identity theft constitutes a concrete injury for standing to sue.

The U.S. Court of Appeals for the Eleventh Circuit has granted a request for a rehearing *en banc* of the panel's decision in *Muransky v. Godiva Chocolatier, Inc.*, which held that a consumer's increased risk of identity theft arising from a merchant's inclusion of too much of his account number on a credit card receipt was enough to constitute a concrete injury that gave him standing to sue (see [Banking and Finance Law Daily](#), April 23, 2019). The panel's decision was vacated after majority of the judges voted in favor of granting the rehearing ([Muransky v. Godiva Chocolatier, Inc.](#), Oct. 4, 2019, Carnes, J.).

The Fair and Accurate Credit Transactions Act limits what a merchant can include on a credit card transaction receipt printed at the point of sale. The merchant cannot include the card expiration date, and it can include no more than the last five digits of the account number. In this case, a consumer filed a class action against Godiva Chocolatier, Inc., complaining that one of its stores had printed the first six and last four digits of his account number on a receipt.

In *Spokeo, Inc. v. Robins* (see [Banking and Finance Law Daily](#), May 16, 2016), the Supreme Court attempted to clarify one aspect of standing—a concrete injury. Analyzing *Spokeo*, the Eleventh Circuit concluded that a concrete injury must actually exist, but it could be intangible. Moreover, the injury need not be substantial—"a small injury" or "an identifiable trifle" would suffice.

In its decision, the Eleventh Circuit considered and rejected decisions by several other U.S. appellate courts regarding the credit card truncation issue, including the decision of the U.S. Court of Appeals for the Third Circuit in *Kamal v. J. Crew Group, Inc.* (see [Banking and Finance Law Daily](#), March 12, 2019), which considered precisely the same issue and reached the opposite conclusion—the consumer did not have standing to sue.

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Companies: Godiva Chocolatier, Inc.

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