

Law

Ruling on class action suits could reverberate in N.J.: Supreme Court decision asking for 'injury in fact' called win for companies

By **Andrew George**, June 6, 2016 at 3:00 AM

According to a ruling last month by the U.S. Supreme Court that might ultimately lead to a reduction in the number of class action lawsuits brought against big business, consumers seeking to sue a company must demonstrate “injury in fact” in order to have a case.

In other words, if you're going to sue a company, you need to be able to show that it or its products actually caused you “concrete harm.”

For us non-lawyers in the room, that might just sound like common sense. But the case is a complex one that has a far-reaching impact.

Lew Goldfarb, counsel for Morristown-based McElroy, Deutsch, Mulvaney & Carpenter, has kept a close eye on the proceedings and thinks now is the time for companies, especially if there is a pending class action suit against them, to reassess their legal strategy in light of the ruling.

“This is big,” Goldfarb said. “Every defense lawyer should revisit the case if it's pending and get back to their clients advice as to the impact of this change.”

The case was predicated on a suit filed by Virginia resident Thomas Robins, who claimed that California-based Spokeo, a people search engine site that acts as a sort of online phonebook, caused him harm by incorrectly listing the unemployed, single 29-year-old as employed, married and older than he actually was. Robins and the class action argued Spokeo was in violation of the Fair Credit Reporting Act.

The high court found Robins' case, along with his claim that harm had been caused, to be inadequate.

While the issue at hand has been previously argued in lower courts, Goldfarb said this latest ruling is the new gold standard.

“My view is, and what I would tell clients and prospective clients ... is that you now have a whole brand new, wide open sense that hasn't been fleshed out before,” Goldfarb said. “There were rulings on the lower court levels, but this is the first time the Supreme Court just nailed it. It's really going to change the complexion of class action litigation.”

Goldfarb said that the ruling is a win for companies, as many will now have an extra layer of protection between them and a potentially frivolous class action suit.

But if someone wins, often that means somebody else has to lose. According to Goldfarb, lawyers, in this case, are the biggest losers.

Goldfarb said that's especially the case in New Jersey, where a “cottage industry” of



Lew Goldfarb

lawyers have exploited a state statute that financially reinforces previous federal interpretations of what constitutes harm.

The statute essentially made past class action suits more lucrative in New Jersey than elsewhere, and many lawyers have benefited.

That's on both sides, of course. Lawyers known to defend companies in class action litigation stand to potentially lose as well.

"This statute is unique to New Jersey," Goldfarb said.

Goldfarb said that he believes the ruling will eventually have a "much more widespread impact than a lot of lawyers want to admit."

"It is a game-changer," he said.

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