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Key 2021 Cases On Standing In Product Defect Class Actions

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Product manufacturers regularly face both individual and class litigation claiming product defects. These cases can be sprawling in scope, with claims for scores of states and broad classes including purchasers with no actual product malfunction.

Courts in these cases face critical threshold questions about who has standing, whether actual injury or manifestation is required to establish standing, and whether class representatives can pursue claims for others — including those with unmanifested defects, or state law claims in states where they do not live.

Although the law on these questions is far from settled, key decisions over the past year by the U.S. Supreme Court and several lower federal courts have clarified the harm required for Article III standing — and accordingly, the scope of individuals and putative class members entitled to bring claims in federal court.

In this article, we survey some of the recent decisions clarifying who can sue, and for what.

What type of injury is needed for standing?

It is well-established that standing requires a concrete, actual injury, but courts across the country continue to grapple with how to apply that standard in product liability class actions. Courts are split on whether each putative class member's product must malfunction for those class members to have standing to sue or recover damages.

Where a manifest defect is required, each and every class member must allege and ultimately prove that a malfunction occurred in the specific product he or she purchased. Because of the individual inquiry required to establish manifestation, certifying a class becomes much more difficult.

The Supreme Court's 2021 ruling in TransUnion LLC v. Ramirez may provide a strong defense to "no injury" (or "no manifestation") class actions in federal court.[1] Plaintiff Sergio Ramirez sued TransUnion under the Fair Credit Reporting Act, or FCRA, alleging that TransUnion's practice of placing an alert on the credit reports of consumers whose names matched a list of suspected terrorists led an automobile dealership to refuse to sell him a car.[2]

The U.S. District Court for the Northern District of California certified a class of all individuals with similar alerts in their credit files, although TransUnion disclosed the credit reports of only a fraction of the class members to third parties during the relevant time period.[3] On appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed, concluding that all class members had standing to assert their claims under the FCRA, because they either experienced reputational harm or experienced a material risk of future harm.[4]

On June 25, 2021, the Supreme Court reversed the Ninth Circuit's judgment.[5] The high court held that all class members must have standing to recover damages, and that only those class members who actually suffered a concrete, materialized harm by disclosure of their credit reports to third parties could establish standing under Article III.[6]

The thousands of class members with misleading credit files that were not disclosed to third parties during the relevant time period, the court found, did not have a sufficiently concrete, materialized injury and therefore lacked standing, despite establishing a statutory violation and a material risk of future harm.[7]

The Supreme Court majority voiced concern that were it to hold otherwise, many class members who had not actually suffered a materialized injury "would first learn that they were 'injured' when they received a check compensating them for their supposed 'injury.'"[8]

They found it "difficult to see how a risk of future harm could supply the basis for a plaintiff's standing when the plaintiff did not even know that there was a risk of future harm."[9] In other words, a risk of future harm that does not materialize "would ordinarily be cause for celebration, not a lawsuit."[10]

In TransUnion, the Supreme Court not only confirmed the general rule of "no concrete harm, no standing"[11] that it had articulated five years earlier in Spokeo Inc. v. Robins,[12] the majority also expanded on Spokeo in a number of critical ways that may broadly affect other class litigation.

- The court held that "an injury in law is not an injury in fact."[13] Even if a defendant's conduct violates a statute, each individual class member must still suffer a specific, materialized injury that exceeds the "mere risk of future harm."[14]

- The court emphasized that federal courts lack subject matter jurisdiction to hear a class action that involves uninjured class members, including those alleging only a risk of future harm. Actual manifest injury is required for each class member.

- The court explicitly rejected standing for out-of-state plaintiffs without a personal connection to the alleged harm.[15] Named plaintiffs cannot show that they personally suffered a concrete, materialized harm as a result of alleged violations in states where they do not live and did not personally experience an injury.

Will lower courts enforce Transunion beyond federal statutory claims?

The materialized injury requirement for Article III standing is not new to the federal courts. It has long been the law of the U.S. Court of Appeals for the Eighth Circuit, which held in 1999 in Briehl v. General Motors Corp.[16] that "purchasers of an allegedly defective product have no legally recognizable claim where the alleged defect has not manifested itself in the product they own."[17]

And last year, in Johannessohn v. Polaris Industries Inc.,[18] the Eighth Circuit denied certification of a putative class of plaintiffs who purchased allegedly defective ATVs manufactured by Polaris for this same reason.[19]

The U.S. District Court for the District of Minnesota had previously denied certification, because the putative class included members whose ATVs never manifested the alleged defect, and who therefore did not suffer any Article III injury.[20] On appeal, the plaintiffs argued that the manifest defect rule did not apply, and even if it did, they had sustained concrete economic damages because they allegedly overpaid for the vehicles.[21]

The Eighth Circuit rejected the plaintiffs' attempt to sidestep the manifest defect rule by claiming economic injury in the form of an inflated purchase price, and held that "plaintiffs claiming economic injury do not have Article III standing in product defect cases unless they show a manifest defect."[22] Because the proposed class also included purchasers whose ATVs never caught fire, the class included members without standing and could not be certified.[23]

Federal courts outside the Eighth Circuit may find that TransUnion offers a basis to join the Eighth Circuit and require materialized harm in product defect cases claiming economic injury, imposing a significant barrier to entry for class actions in federal court.

On its face, TransUnion's holding is a win for defendants, but it is not without potential pitfalls. Challenging standing in federal court may come at a cost if it pushes class actions to state courts, where defendants may find themselves litigating multistate class actions in less desirable venues.

Which comes first: standing or class certification?

Another thorny standing question that frequently arises in class actions is when to address the ability of named plaintiffs to represent out-of-state plaintiffs on state law claims.

It is not uncommon for a relatively small group of named plaintiffs to file large multistate class actions, purporting to represent broad classes and subclasses in states where none of them reside or suffered any injury.

A critical question in these cases is whether the named plaintiffs have standing to pursue claims under the laws of, and on behalf of putative class members from, these states. Courts across the country are split on whether these questions of standing are threshold matters that should be addressed on a motion to dismiss, or whether they are best addressed through the rubric of Rule 23 on a motion for class certification.

The U.S. District Court for the Eastern District of Michigan recently addressed this issue in Withrow v. FCA US LLC,[24] and held that the most appropriate course of action was to address standing at the outset rather than in the context of Rule 23.[25]

The Withrow court noted that:

> [T]he standing inquiry and Rule 23 inquiry are fundamentally different. Standing is rooted in the Constitution. And the purpose of the doctrine is to protect the tripartite system of government set up by that founding document. Rule 23, on the other hand, is a procedural device. The purpose of

> Rule 23 is to efficiently resolve the claims of many, eliminate inconsistent rulings, and grant relief on a collection of small claims that, without aggregation, would not be brought to court. In short, different origins, different purposes.[26]

Because of these different purposes, the court found, Rule 23's focus on commonality, typicality and adequacy does not adequately address Article III's requirement that plaintiffs have standing for each claim they assert. The Withrow court reviewed a number of decisions deferring the question of standing to the class certification stage,[27] explaining why that approach is both unpersuasive and inconsistent with Supreme Court and Sixth Circuit law. [28]

Ultimately, the Withrow court concluded that the named plaintiffs only had standing to bring claims under the laws of states where they lived and purchased their vehicles, and that claims for absent putative class members in other states must be dismissed on the pleadings.[29] As courts continue to grapple with the question of when to address standing for unrepresented class claims, the Withrow decision provides a helpful guide to the interplay between Article III and Rule 23.

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[1] TransUnion LLC v. Ramirez, No. 20-297, 141 S. Ct. 2190 (2021).

[2] Id. at 2197, 2202.

[3] Id.

[4] Ramirez v. TransUnion LLC, 951 F.3d 1008, 1030 (9th Cir. 2020).

[5] TransUnion LLC, 141 S. Ct. at 2214.

[6] Id.

[7] Id.

[8] Id. at 2212.

[9] Id.

[10] Id. at 2211.

[11] Id. at 2200

[12] Spokeo Inc. v. Robins, 578 U.S. 856 (2016).

[13] TransUnion, 141 S. Ct. at 2197, 2205.

[14] Id. at 2210-11.

[15] Id. at 2205-06.

[16] Briehl v. Gen. Motors Corp., 172 F.3d 623 (8th Cir. 1999).

[17] Id. at 628.

[18] Johannessohn v. Polaris Indus. Inc., 9 F.4th 981 (8th Cir. 2021).

[19] Id. at 984.

[20] Id.

[21] Id. at 987-88.

[22] Id. at 988.

[23] Id.

[24] Withrow v. FCA US LLC, No. 19-13214, 2021 WL 2529847, at *8 (E.D. Mich. June 21, 2021).

[25] Id. at *7-8.

[26] Id. at *7 (internal quotations and citations omitted).

[27] Id. at *15-22.

[28] Id.

[29] Id. at *9.