

Data Breach Claims Stretch Meaning of Concrete Injury

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Robert Austin Jenkin II, an associate in Troutman Pepper Locke's Privacy + Cyber Practice Group, was quoted in the April 22, 2026 *American Bar Association Litigation Section* article, "[Data Breach Claims Stretch Meaning of Concrete Injury](#)."

"The [Elephant] decision is a continuation of battles over standing," says Robert A. Jenkin II, Princeton, NJ, co-chair of the Litigation Section's Privacy and Data Security Litigation Committee. He notes that, "in the majority of cases, there is no tangible harm alleged." In the battle over standing here, the Elephant court reasonably disagreed with the other circuits because the "other circuits weren't applying [TransUnion], and were allowing claims to move forward based solely on allegations of access to personal information."

Indeed, it may be that the "opinion didn't go far enough," says Jenkin, meaning the appellate court in Elephant may not have fully developed the issue of concrete injury, because one of the two plaintiffs whose claims survived "merely alleged that a third party claimed to be selling his information." He explains that, if there is no claim in identity theft fraud unless someone has actually sold the information, as the court stated, "that should also be the conclusion for disclosure of private information."

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