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Locke Lord QuickStudy: Class Actions Continue Down Rocky Road in Eleventh Circuit as Court Dismisses Godiva Class Action

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In *Muransky v. Godiva Chocolatier, Inc.*, 16-16486, 2020 WL 6305084 (11th Cir. Oct. 28, 2020), the US Court of Appeals for the Eleventh Circuit dealt another blow to the plaintiffs' class action bar by not only vacating a \$6.3 Million settlement, but dismissing an underlying class action lawsuit under *Spokeo*. Just last month, the Eleventh Circuit eliminated incentive awards intended to sweeten the pot for class action plaintiffs in *Johnson v. NPAS Solutions, LLC*, No. 18-12344, 2020 WL 5553312 (11th Cir. Sept. 17, 2020).

In *Muransky*, the plaintiff filed a class action lawsuit under the Fair and Accurate Credit Transactions Act ("FACTA") alleging that Godiva violated FACTA by issuing a receipt that contained the first six and last four digits of the plaintiff's sixteen-digit credit card number – which is too many digits under FACTA. The plaintiff's complaint made clear, however, that the suit was only "statutory in nature" and was "not intended to request any recovery for personal injury." The lawsuit was filed as a putative class action.

Muransky was filed before the Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), as revised (May 24, 2016), in which the Supreme Court ruled that a "concrete injury" is required in order to have standing to bring a lawsuit. *Id.* at 1548. A statutory violation alone, such as the violation of FACTA alleged in *Muransky*, does not constitute a concrete injury. *Id.* at 1550.

With the *Spokeo* decision looming, the parties quickly moved to reach a settlement of the lawsuit. Ultimately, the parties agreed to a settlement of \$6.3 million instead of the \$342 million initially sought by the plaintiff.

Before the Supreme Court rendered its opinion in *Spokeo*, the district court certified the class, granted preliminary approval of the settlement, and directed notice to the class members. Four class members filed objections to the settlement, though none of the objectors initially argued that the plaintiff lacked standing.

By the time the district court conducted a fairness hearing, the *Spokeo* decision had been issued. Following the decision, a single objector took notice and argued that the district court was obligated to determine whether the plaintiff had Article III standing as required by *Spokeo*. Without addressing *Spokeo*, the district court approved the class settlement.

An Eleventh Circuit panel initially agreed with the decision of the district court and concluded that the plaintiff has satisfied the Article III requirements set forth in *Spokeo*. The panel did vacate the first opinion and issue a new one in its place, but still concluded that the plaintiff had standing and approved the settlement.

The full court, however, ordered a rehearing *en banc* and has now vacated the panel opinion leading to the Eleventh Circuit's finding that the plaintiff, who initially alleged that he was only seeking damages for a statutory violation, and not for any personal injury, did not suffer any concrete injury under *Spokeo*. Not only did the Eleventh Circuit vacate the settlement between the parties, it dismissed the entire lawsuit.

The decision continues to chip away at the incentive to bring class action lawsuits in the Eleventh Circuit. Between the *Johnson* decision stripping away incentive awards and this decision rejecting a settlement and dismissing an action under *Spokeo*, the Eleventh Circuit appears to be a less desirable place for class actions today than it was just a few months ago.

We will continue to monitor the decisions of the Eleventh Circuit closely as the Court appears poised to continue to closely scrutinize class action settlements, no matter how sweet the settlement terms may appear.

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