

Supreme Court Denies Insurer's Petition to Review Standing in Data Breach Class Actions

CYBERSECURITY AND PRIVACY | LIFE, ANNUITY, AND RETIREMENT SOLUTIONS | TECHNOLOGY | HEALTH CARE | FINANCIAL SERVICES REGULATORY | MARCH 31, 2018

In recent years, the insurance and financial services industries have been targets of high profile data breaches. The breached companies – themselves the victims of cyberattacks – often face putative class actions by consumers whose nonpublic financial and health information was allegedly compromised in the breach. Defendants in these cases have argued that a plaintiff's mere fear of future identity theft in the wake of a data breach is too speculative to be an injury in fact giving rise to standing to sue under Article III of the United States Constitution. Thus far, the standing question has split the federal circuits. The answer may make or break the future of data breach consumer class actions, as the majority of individuals whose information is compromised never experience identity theft or fraudulent charges traceable to the breach.

When will the Supreme Court weigh in? Unfortunately, not soon. On February 20, the Supreme Court denied a petition for writ of certiorari in *Attias v. CareFirst* to resolve a circuit split on the standing issue. Absent Supreme Court guidance on this issue, we anticipate that district courts within the District of Columbia, Sixth, and Seventh Circuits – which have ruled favorably for plaintiffs on the standing issue – will emerge as the forums of choice for data breach class actions. By contrast, defendants will likely seek to consolidate data breach class actions in the district courts within the Eighth and Fourth Circuits, which have held that fear of future identity theft is insufficient to confer standing to sue.

©2019 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.