AUGUST 22, 2022

Eleventh Circuit holds that every class member must have standing for a class action settlement to be approved

by James F. Bogan III

Takeaway: We have posted articles addressing the U.S. Supreme Court's standing-related decision in *Frank v. Gaos*, 139 S. Ct. 1041 (2019) (*see SCOTUS punts in cy pres-only class settlement case, remanding on Spokeo standing issue* (March 29, 2019)), as well as its decision in *TransUnion, LLC v. Ramirez,* 141 S. Ct. 2190 (2021) (see SCOTUS standing ruling – "No concrete harm, no standing" – sidesteps class action issues and could limit federal subject matter jurisdiction over class actions (June 30, 2021)). In a recent opinion dealing with a complicated class settlement of claims alleged under the Telephone Consumer Protection Act, the Eleventh Circuit panel in *Drazen v. Pinto,* 41 F.4th 1354 (11th Cir. 2022), analyzed *Gaos* and *TransUnion* and held that whenever a district court approves a class action settlement, it must ensure that *every* class member within the defined settlement class has Article III standing. Because the district court for the Southern District of Alabama misconstrued the law and approved a settlement class that – according to Eleventh Circuit precedent – included uninjured class members, the panel vacated the class settlement and remanded the action so the parties and the district court could redefine the settlement class definition to include only injured class members.

The panel started "with the basic question of whether we have subject-matter jurisdiction in this case." *Id*. at 1359. After analyzing the Supreme Court's decision in *Gaos*, the panel concluded that "even at the settlement stage of a class action, we must assure ourselves that we have Article III standing at every stage of the litigation. … That requirement is derived from Article III as well as the unique nature of class action settlements as laid out in Rule 23(e), which require court approval." *Id*. at 1360.

Then, after analyzing the Supreme Court's decision in *TransUnion*, the panel described the "two key takeaways from *TransUnion*" as: "1) To satisfy the concrete injury requirement for standing, a plaintiff alleging a statutory violation must demonstrate that history and the judgment of Congress support a conclusion that there is Article III standing; 2) 'Every class member must have Article III standing in order to recover individual damages.'" *Id*. (quoting *TransUnion*, 141 S. Ct. at 2204–5).

The panel then analyzed prior Eleventh Circuit precedent through the lens of *TransUnion*, concluding: "when a class seeks certification for the sole purpose of a damages settlement under Rule 23(e), the class definition must be limited to those individuals who have Article III standing. If every plaintiff within the class definition in the class action in *TransUnion* had to have Article III standing to recover damages after trial, logically so too must be the case with a court-approved class action settlement." *Id*. at 1361.

Having articulated the governing legal framework, the panel then turned to *Salcedo v. Hanna*, 936 F.3d 1162, 1172 (11th Cir. 2019). There, the Eleventh Circuit held "that a plaintiff has not suffered a concrete injury for Article III standing purposes when she has received a single unwanted text message." *Drazen*,

41 F.4th at 1362.

Applying *Salcedo*, the *Darden* court rejected the class definition underpinning the class settlement approved by the district court because the definition included class members who did *not* have standing, *i.e.*, class members who had "received a single unwanted text message." *Id.* Accordingly, the panel "vacate[d] the class certification and settlement and remand[ed] in order to give the parties an opportunity to redefine the class with the benefit of *TransUnion* and its common-law analogue analysis." *Id*. at 1363.