Client Alert: SCOTUS Remands Google Class-Action Settlement over Standing Issues

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The U.S. Supreme Court has vacated the Ninth Circuit's decision approving a settlement between Google and a class of its users, based on unresolved questions regarding the users' standing to bring their federal privacy claim. In remanding the matter to the lower courts for resolution of the standing issue, the Court relied on its 2016 decision requiring plaintiffs to articulate an actual injury caused to them by the defendant, rather than simply alleging that the defendant committed a facial violation of a federal statute. The Court's new opinion has important implications for parties bringing, defending, and settling class-action lawsuits in federal court involving not only privacy, but all other claims.

The Class's Allegations Against Google

In 2011, the plaintiff class filed its complaint in California federal court alleging that Google violated the Stored Communications Act, 18 U.S.C. § 2701 *et seq*. The class consisted of members who had conducted a Google search and followed one of the links returned by the search within a certain time frame. Plaintiffs alleged that Google then shared the users' search terms with the server hosting the webpage that the plaintiffs visited following their browser search. Google's disclosures, the class alleged, constituted wrongful "divulg[ences] . . . [of] the contents of a communication" by an electronic-communication-service provider in violation of federal law.

Google's Response and the Parties' Proposed Settlement

Google filed a motion to dismiss the plaintiffs' complaint, arguing that the class failed to articulate a concrete injury inflicted on its members by Google and that the class therefore lacked standing. Yet Google later withdrew its motion and negotiated a settlement with the class. Under the settlement's terms, Google agreed to pay $8.5 million, most of which would be distributed among six internet-privacy nonprofits whose work would provide indirect benefits to the class. After the trial

court approved the settlement, five class members appealed, arguing in part that the agreement violated federal procedural rules for failing to allocate compensation directly to class members. Upon review, the Ninth Circuit affirmed the lower court's approval of the settlement.

The Supreme Court's Decision

On March 20, 2019, the Supreme Court vacated the Ninth Circuit's decision to approve the settlement based not on allegations of its impropriety, but rather the uncertainty surrounding the class's standing to bring its federal claim. The Court found that, as a threshold matter, it must examine whether a plaintiff experienced an actual injury caused by the defendant that would permit the plaintiff to bring a federal claim. In so finding, the Court relied on *Spokeo, Inc. v. Robins*, 578 U.S. __, 136 S. Ct. 1540 (2016), which determined that standing in federal court "requires a concrete injury even in the context of a statutory violation." In other words, a plaintiff who does not assert a "concrete and particularized" injury caused by the defendant has no rightful ability to pursue his or her federal claim, even if the defendant's conduct violated the statute on its face. Consequently, the Court reasoned that the proposed Google settlement agreement could not receive judicial approval unless the plaintiff class had standing in the first place to pursue the underlying claim. The Ninth Circuit's failure to determine whether the class members' were injured by Google and had standing to bring their federal class-action complaint meant that the parties' proposed agreement to resolve the complaint could not be properly reviewed.

Key Implications for Parties to a Federal Class-Action Lawsuit

The Supreme Court's new decision provides important guidance to parties involved in federal class-action lawsuits. Some of the key considerations include the following:

- Parties should consider seeking a clear determination from the lower court on the issue of plaintiffs' standing before negotiating, preparing, and filing a proposed settlement for approval. Otherwise, parties run the risk of investing time, effort, and resources into a settlement that the court may not properly approve, or that may be undone by a reviewing court.

- Parties to federal class-action suits may have decreased incentives to engage in early settlement discussions. Before the Court's ruling, plaintiffs with weak standing arguments had, for example, an incentive to accept lower settlement offers, and defendants had an incentive to negotiate such settlements. The Court's decision reverses that incentive. Settling a federal putative class action with unresolved standing questions could well be futile, because the trial court will be required to resolve those standing questions prior to approving any settlement. This eliminates a plaintiff's incentive to settle such a case on terms favorable to the defendant, because a plaintiff with a weak standing position will not see the settlement approved. It also eliminates a defendant's incentive to negotiate prior to resolution of standing questions, because plaintiffs will be unlikely to agree to terms that account for a weak standing claim.