

# Spokeo, Inc. v. Robins

On May 16, 2016, the United States Supreme Court issued its decision in the case of Spokeo v. Robins, establishing important parameters for Article III federal jurisdiction in statutory damages litigation. Eleven days later, on May 27, 2016, with the generous assistance of our supporters, NCLC was able to launch a new webpage for consumer advocates and practitioners dedicated to critical analyses of the Spokeo decision and providing access to helpful briefs and model language, relevant court decisions and other useful practice aids. Since that time, we are proud to have been able to post over 350 separate documents on the webpage which have provided valuable guidance and information regarding the quickly developing law and practice under Spokeo. This service was considered to be vital because of the large number of cases stayed in the federal District Courts and Courts of Appeal pending the Spokeo outcome. Once the Spokeo opinion was issued there was a flood of new arguments, hearings and appeals that helped to define the application of the Supreme Court's ruling. Providing quick and easy access to the new decisions broken down by the consumer statutes to which they applied helped to inform and educate the consumer advocacy community.

Now, however, there is a wealth of newly published opinions applying Spokeo that generally are indexed and available through traditional research tools and services. Therefore, **effective January 1, 2017**, NCLC will no longer be posting published Spokeo decisions but, rather, will focus its efforts on Spokeo-related amicus briefs, litigation advice and assistance and the coordination of litigation arguments and strategies.

Spokeo opinions issued before that date still will be available on the NCLC website. In addition, unpublished opinions issued after that date, as well as new briefs and model language, will be posted under a new materials section of the webpage. Advocates are encouraged to continue to submit such materials to NCLC at [spokeo-upload@nclc.org](mailto:spokeo-upload@nclc.org). Finally, NCLC consumer manuals and digital library will be kept up to date and current on significant Spokeo developments, decisions and analyses.

We appreciate the wonderful support and feedback NCLC has received for its Spokeo webpage and look forward to continuing to provide useful resources related to the Spokeo decision for the benefit of the consumer advocacy community.

**[NCLC's Analysis](#) || [General Spokeo Analysis](#) || [Briefs and Model Language](#) || [Relevant Court Decisions](#) || [Other Practice Aids](#) || [Additional Resources](#)**

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## **Robins v. Spokeo, Inc., Case No. 11-56843 (9th Cir.):**

- Plaintiff-Appellant Robins filed a supplemental brief in response to Spokeo's January 3rd submission on January 7th, 2017
- Defendant-Appellee Spokeo filed a supplemental brief on January 3rd, 2017, calling the 9th Cir. Court of Appeals' attention to two new cases decided since oral argument (*Meyers v. Nicolet Restaurant of De Pere, LLC*, — F.3d —, 2016 WL 7217581 (7th Cir. Dec. 13, 2016 and *Soehnlen v. Fleet Owners Insurance Fund*, — F.3d —, 2016 WL 7383993 (6th Cir. Dec. 21, 2016))
- Plaintiff-Appellant Robins filed a supplemental brief in response to Spokeo's submittal that the pertinent issue in this case is whether Robins suffered a "real-world" harm. Plaintiff-Appellant instead explains that because Spokeo concedes that the violation of a statutory right can be concrete without any further showing, the issue is whether Section 1681e(b) protects a concrete interest. Robins argues that it does.
- Defendant-Appellee Spokeo filed a supplemental brief arguing that Congress expressed no judgment as to whether the publication of false information in a consumer report automatically

constitutes an injury-in-fact, and that Section 1681e(b) does not therefore protect a concrete interest.

- Upon remand to the U.S. Court of Appeals for the Ninth Circuit, Plaintiff-Appellant, Thomas Robins, filed a supplemental brief in response to the Court’s request for briefing on whether the particular procedural violations of the Fair Credit Reporting Act alleged by Robins entail a degree of risk sufficient to meet the concreteness requirement for Article III standing.
- Defendant-Appellee, Spokeo Inc., also submitted a supplemental brief, arguing that neither the statutory violations alleged nor the factual allegations of the complaint demonstrate that Robins suffered the required concrete harm or faced a certainly impending risk of harm.
- The CFPB has filed an unopposed motion for leave to file a brief as amicus curiae in *Robins v. Spokeo, Inc.* The CFPB writes in support of Plaintiff-Appellant, arguing that Spokeo’s alleged dissemination of an inaccurate consumer report about Robins is a concrete injury under Article III.
- Experian has filed an unopposed motion for leave to file a brief as amicus curiae in *Robins v. Spokeo, Inc.* In its brief, Experian argues that Plaintiff alleges a broad “type” of inaccuracy that cannot without more constitute a concrete harm sufficient to satisfy Article III.

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## Statute-Specific Spokeo Analyses Excerpted from Updated National Consumer Law Center (NCLC) Legal Treatises

Relevant *Spokeo* analyses are available below, along with links to the treatises from which they have been extracted.

- **Class Actions** *Spokeo* analysis from Consumer Class Actions (760 pp.; in print and online)  
Ch. 10.3.3: Typicality—Rule 23(a)(3) PDF || MS Word
- **Fair Credit Reporting Act** *Spokeo* analysis from Fair Credit Reporting (1136 pp. in two vol.; online update)  
Ch. 11.2.1.3.9a PDF || MS Word
- **Fair Debt Collection Practices Act** *Spokeo* analysis from Fair Debt Collection (1416 pp. in two vol.; online update)  
Ch. 6.11a: Article III Constitutional Standing Under *Spokeo* As Applied to the FDCPA PDF || MS Word
- **Foreclosure**  
Ch. 10.4.1.2A Standing PDF || MS Word
- **Mortgage Lending**  
Ch. 7.4.5 PDF || MS Word
- **Real Estate Settlement Procedures Act (mortgage servicing provisions)**  
Ch. 3.2.10.7: *Spokeo* analysis from Foreclosures and Mortgage Servicing PDF || MS Word
- **Truth in Lending** *Spokeo* analysis from Truth in Lending (1650 pp. in two vol.; online update)  
Ch. 11: Standing PDF || MS Word
- **Telephone Consumer Protection Act** *Spokeo* analysis from Federal Deception Law (496 pp.; online update)  
Ch. 6.9.2a: Article III Standing PDF || MS Word

NCLC’s full treatises contain additional information concerning litigation issues under these federal statutes. NCLC’s 20 consumer law treatises are the most important tool in a consumer lawyer’s arsenal. For over 30 years, the treatises have helped new and experienced attorneys around the country win cases involving debt collection, mortgages, other forms of consumer credit, credit reporting, class actions, vehicle sales, and more. Written by legal experts, the treatises are

comprehensive and practical.

The treatises are available in print and online. The online versions include additional pleadings and primary source material, and feature frequent updates, full text search, live links, and the ability to copy/paste excerpts. Subscriptions are available as print and online or online-only, and to individual titles or to the complete 20 treatise set. Visit: [www.nclc.org/bookstore](http://www.nclc.org/bookstore).

## General Spokeo Analyses

- The Supreme Court's *Spokeo* Decision: Less Than Meets the Eye by NCLC attorney Charles Delbaum, May 23, 2016.
- In-depth overall analysis of *Spokeo's* requirements prepared by Gupta-Wessler PLLC, May 2016. NACA members can access the analysis directly at <http://www.consumeradvocates.org/spokeo-resources>. Others can seek permission to download the analysis from the Gupta Wessler Law firm through their website.

## Other Practice Aids

Sample motions, model damage allegations for pleadings, and other practice materials are available below. Relevant materials may be submitted to NCLC's Director of Litigation Stuart Rossman at [spokeo-upload@nclc.org](mailto:spokeo-upload@nclc.org). **Please submit a Word version, and, if the document has been filed with the court, a PDF version with the date stamp.** Note: NCLC has neither proofread nor edited submitted materials.

- Storm v. Paytime, Inc. NACA Motion for Leave to File an Out of Time Spokeo Amicus Brief-3rd Circuit Court of Appeals
- Winehouse v. GC Services LP, FDCPA Class Action Complaint with Spokeo allegations filed in E.D.N.Y.
- Model TCPA Injury Allegations PDF || MS Word
- Perrill v. Equifax Amended FCRA Complaint with Spokeo Allegations (W.D. TX)

## Additional Resources

- *Spokeo, Inc. v. Robins* Supreme Court Decision, May 16, 2016.
- National Association of Consumer Advocates (NACA) webinar: What does the Spokeo Decision Mean for Consumer Lawyers, May 18, 2016. Cost: \$35 (NACA member); \$90 (Non-member) Note: Non-members of NACA must be vetted prior to purchasing. Please e-mail [rebecca@consumeradvocates.org](mailto:rebecca@consumeradvocates.org).
- Still Standing After *Spokeo*, Stuart Rossman, *Trial Magazine* article, Feb. 2017

NCLC thanks members of the National Association of Consumer Advocates, the National Association of Consumer Bankruptcy Attorneys, and our many others for their generous support for this web content. Additional donations are welcome. Please contact NCLC Director of Litigation Stuart Rossman ([srossman@nclc.org](mailto:srossman@nclc.org)).

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.