THE REVIEW OF
BANKING & FINANCIAL SERVICES
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 38 No. 1 January 2022

NEW LIMITS ON STANDING TO PURSUE STATUTORY DAMAGES CLAIMS

In the recent TransUnion case, the Supreme Court held in a consumer financial services class action that Congress lacked authority to allow a bounty to a person who did not suffer concrete harm as a result of the alleged violation. In this article, the author discusses the decision in detail and its implications for a broad variety of statutory regimes. He then lays out the arguments that TransUnion *also bars federal statutory damages in state courts. He closes by noting an important procedural question in class actions that the Court expressly declined to decide.*

By Stephen J. Newman *

The Supreme Court's recent decision in *TransUnion LLC v. Ramirez*[1] marks a major change in consumer financial services litigation. Numerous federal statutes governing financial institutions and related businesses authorize private plaintiffs to recover ─ in lieu of proving actual damages ─ statutory damages of a particular dollar amount (or range of amounts) per violation. Proponents of statutory damages regimes argue that compliance is encouraged if a bounty is available to those who bring violations to light. Statutes authorizing such bounties include the Fair Credit Reporting Act, the Truth in Lending Act, the Fair Debt Collection Practices Act, the Telephone Consumers Protection Act, and the Fair Credit Reporting Act. However, for companies whose interactions with the public routinely number in the thousands or millions, the bounty regime hypothetically creates astronomical legal exposure, if statutory damages can be sought on a classwide basis. *TransUnion* greatly reduces the risk by holding that Congress lacks authority to allow a bounty to a person who did not suffer concrete harm as a result of the alleged legal violation. The case also acknowledges that in class actions, persons without such concrete harm may not remain in any certified class. As a practical matter, *TransUnion* will focus the legal system's efforts on achieving compliance in the areas where consumers are most likely to benefit in the form of actual financial losses avoided. Pre-*TransUnion* law encouraged excessive focus on areas where a technical violation might be shown, even if the violation had no

[1] 141 S. Ct. 2190 (2021).

* *STEPHEN J. NEWMAN is a partner at Stroock & Stroock & Lavan LLP, Los Angeles, California. His e-mail address is snewman@stroock.com. The author and others at Stroock are defense counsel in the* TransUnion, Poremba, *and* Zevon *cases described below. The views expressed herein are the personal views of the author and not necessarily those of the firm, TransUnion, or any other firm client. This article is intended to provide a general review of recent legal developments, rather than specific legal advice.*

INSIDE THIS ISSUE