

Blog Entry: Seventh Circuit Sheds Light on Spokeo; Affirms Dismissal of Class Action for Lack of Standing

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Source: *Array*

When Derek Gubala subscribed to Time Warner Cable in 2004, he gave it his birth date, home address, home and work phone numbers, social security number, and credit card information.

Gubala canceled his subscription in 2006, and eight years later, learned that Time Warner still had his personal information.

He sued Time Warner in the Eastern District of Wisconsin, alleging that it violated the Cable Communications Policy Act, which requires cable operators to “destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected” and there are no pending requests or orders for access to that information. He also sought certification of a nationwide plaintiffs class.

The district court dismissed his case for lack of standing, and on January 20, 2017, the Seventh Circuit affirmed. It noted that while there is “unquestionably a *risk* of harm” to Gubala, he failed to allege “that Time Warner has ever given away or leaked or lost any of his personal information or intends to give it away,” or that Gubala is actually at risk of having his information stolen from Time Warner. And although the statute says that “any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court,” Gubala failed to allege that he had in fact been “aggrieved” by Time Warner’s continued retention of his personal information, or that it “had even been at risk of being leaked.”

Instead, all Gubala had to back up his lawsuit was his claim that Time Warner’s violation of the statute “made him *feel* aggrieved,” which fell short of a “concrete injury” needed to achieve standing to sue in federal court.

As for Gubala’s contention that “his personal information” had “economic value” which was “incorporated into the value of” his “transaction” with Time Warner, and that Time Warner’s “unlawful retention” of that information “deprived” him “of the full value of that transaction,” here’s how the Court characterized that argument: “This is gibberish.”

The case is *Gubala v. Time Warner Cable, Inc.*, Seventh Circuit Court of Appeals, case no. 16-2613, and the decision can be found here: <https://goo.gl/Jin2YS>.