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David Balsler, Peter Starr & John Toro, King & Spalding

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Implications of Eleventh Circuit's GoDaddy Decision for Class-Action Settlements

Contributed by [David Balsler](#), [Peter Starr](#) & [John Toro](#), King & Spalding

The US Court of Appeals for the Eleventh Circuit has pronounced that courts cannot “check [their] Article III requirements at the door” when determining whether to certify a settlement class under [Fed. R. Civ. P. 23\(e\)](#). On July 27, 2022, the court issued its opinion in *Drazen and GoDaddy.com, LLC v. Pinto*, [41 F.4th 1354](#) (11th Cir. 2022), vacating a district court's approval of a class settlement due to Article III standing concerns.

Remarkably, the parties had not briefed the issue of standing on appeal—it was raised by the court sua sponte. The court unambiguously held that “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.” The decision thus reflects the continuation of a trend in which federal courts have sharpened their focus on the requirements of Article III, and litigants on both sides of the aisle should take notice.

This article examines the evolution of Article III standing in federal class-actions, the impacts of the *GoDaddy* court's application of *TransUnion*, and how litigants should approach class certification moving forward in order to secure finality.

Traditional Approach to Article III Standing

Until recent years, most federal courts assessed Article III standing in the class-action context by looking to the class representatives themselves—not the circumstances of absent class members. As one well-known treatise put it, “the vast majority of courts continue to heed the basic rule that the standing inquiry focuses on the class representatives, not the absent class members.”

In fact, before the *GoDaddy* decision, the Eleventh Circuit itself was among that “vast majority” of courts, having held that “only one named plaintiff for each proposed class needs to have standing for a particular claim to advance.” See *Wilding v. DNC Servs. Corp.*, [941 F.3d 1116](#), 1124 (11th Cir. 2019). The court had similarly held that a case could proceed as a class action even “if there are some uninjured members in the class as it is currently defined.” See *Cordoba v. DIRECTV, LLC*, [942 F.3d 1259](#), 1274 (11th Cir. 2019).

And the Supreme Court had likewise suggested that only named plaintiff standing was required to settle a class action. Its decision in *Frank v. Gaos*, 139 S. Ct. 1041, 1046 (2019) noted that “[a] court is powerless to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing.”

That is not to say that absent class members' standing was irrelevant to class certification. A number of jurisdictions held that “a class should not be certified if it is apparent that it contains a great many persons who have suffered no injury at the hands of the defendant,” or that a class must “be defined in such a way that anyone within it would have standing.” See *Kohen v. Pacific Inv. Mgmt. Co. LLC*, [571 F.3d 672](#), 676-77 (7th Cir. 2009); *Denney v. Deutsche Bank AG*, [443 F.3d 253](#), 263-64 (2d Cir. 2006). But in general, this mode of analysis focused on whether the class definition was overbroad rather than on specific facts applicable to absent class members.

With respect to the specific question presented in the *GoDaddy* case—i.e., whether absent class members' standing is relevant to class settlement—there's been even less judicial guidance. The US Court of Appeals for the Fifth Circuit grappled with this question in its *In re Deepwater Horizon* decision. See [739 F.3d 790](#) (5th Cir. 2014). After surveying the approaches taken by various jurisdictions, the *Deepwater* court held that no showing was required as to whether absent class members suffered an injury traceable to the defendant's conduct.

The court reasoned that “it would make no practical sense for a court to require evidence of a party's claims when the parties themselves seek settlement under Rule 23(e).” And it concluded there was “no authority . . . that would permit an evidentiary inquiry into the Article III standing of absent class members during class certification and settlement approval under Rule 23.”

TransUnion's Effect on Class Member Standing

A reasonable observer might therefore ask what happened to shake up the status quo. The answer is that the Supreme Court in 2021 decided *TransUnion, LLC v. Ramirez*, which made it more difficult for class action plaintiffs to satisfy the requirements of Article III. 141 S. Ct. 2190 (2021). *TransUnion* did not address class member standing in the context of settlement under Rule 23(e), but the *GoDaddy* court has determined that its holding does indeed apply to certification of settlement classes.

The *TransUnion* decision, which concerned violations of the [Fair Credit Reporting Act](#), focused on Article III's requirement of an injury-in-fact. The plaintiff in that case claimed that TransUnion had included inaccurate information in certain consumer credit files indicating that the consumer's name might be a "potential match" to a name on the Treasury Department's list of "specially designated nationals" barred from doing business in the US due to suspected criminal or terrorist activity.

But there was a further wrinkle in the case: although TransUnion's allegedly inaccurate designation was contained in the credit files of over 8,000 individuals, the majority of those individuals could not show that TransUnion ever disseminated credit reports containing the information to any third parties. Those individuals could show only a risk of future harm rather than an actual injury. As the Supreme Court analogized, these "plaintiffs' harm is roughly the same, legally speaking, as if someone wrote a defamatory letter and then stored it in her desk drawer." Thus, the question for the court was whether a risk of future harm is sufficient injury to confer Article III standing to pursue damages.

The court answered that question in the negative, holding that "the mere risk of future harm, standing alone, cannot qualify as a concrete harm" sufficient to allow a plaintiff to recover damages. And as the court twice repeated: "No concrete harm, no standing." Pertinent to this discussion, the Supreme Court also held that "[e]very class member must have Article III standing in order to recover individual damages."

But it expressly declined to "address the distinct question whether every class member must demonstrate standing before a court certifies a class." As explained below, the Eleventh Circuit's *GoDaddy* decision picks up where *TransUnion* left off, extending the requirement of class member standing to the Rule 23(e) settlement context.

Eleventh Circuit's Application of *TransUnion*

In *GoDaddy*, the plaintiffs alleged that GoDaddy.com, LLC violated the Telephone Consumer Protection Act by making automated calls and text messages to consumers. The class definition ultimately approved by the district court—in settling the case under Rule 23(e)—included "[a]ll persons within the United States to whom . . . Defendant placed a voice or text message call to their cellular telephone" via specified means.

The problem with this class definition is that under Eleventh Circuit precedent, receiving just a single unwanted text message is not a sufficient injury to confer Article III standing. See *Salcedo v. Hanna*, 936 F.3d 1162, (11th Cir. 2019). And in *GoDaddy*, discovery had revealed that "91,000 individuals out of the approximately 1.26 million class members received only a single text message from GoDaddy."

The district court nonetheless certified the settlement class and approved the settlement, relying on prior Eleventh Circuit precedent holding that only the named plaintiffs must have standing. The district court further reasoned that although some absent "class members would not have a viable claim in the Eleventh Circuit, they do have a viable claim in their respective circuit[s]"—because other circuit courts permit standing premised on receipt of just a single unwanted text message.

Following preliminary approval of the *GoDaddy* settlement, a class member objected to the settlement, primarily on the ground that the settlement fund was made up in part of vouchers that could be redeemed for GoDaddy services. Thus, the issue on appeal was whether the settlement was an impermissible "coupon settlement." But the Eleventh Circuit never reached that issue, focusing instead on the requirements of Article III standing in the class settlement context.

As noted, the Eleventh Circuit held sua sponte that a Rule 23(e) settlement class may not be certified if it contains class members who lack standing. The court said this outcome was required by two decisions: the Eleventh Circuit's opinion in *Cordoba*, and the Supreme Court's decision in *TransUnion*.

Addressing *Cordoba* first, the court “acknowledge[d]” that this decision “says that ‘[f]or a class to be certified, [only] the named plaintiff must have standing.’” But it emphasized that *Cordoba* also said that class members’ standing can be relevant to class certification because “at some time in the course of the litigation the district court will have to determine whether each of the absent class members has standing before they could be granted any relief.”

As for *TransUnion*, the court interpreted that opinion to hold “that [courts] can’t award damages to plaintiffs who do not have Article III standing.” The court then reasoned that “[i]f every plaintiff within the class definition 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.”

The portion of *TransUnion* relied on by the Eleventh Circuit was its holding that “[e]very class member must have Article III standing in order to recover individual damages.” Following *TransUnion*, there has been uncertainty about whether the Supreme Court’s reference to recovering “individual damages” was intended to signal that the restriction would not apply to class settlements. After all, reasonable minds can differ about whether divvying up a common settlement fund constitutes “individual” damages. And the procedural posture in *TransUnion*—a post-verdict appeal following trial—contributed to confusion about whether its holding would apply to class settlement under Rule 23(e). But *GoDaddy* has clarified that, in the Eleventh Circuit at least, *TransUnion* applies with full force in the settlement context.

In reaching this conclusion, the Eleventh Circuit also rejected the district court’s permissive approach to assessing class standing on a nationwide basis. Recall that the district court had reasoned that certifying a settlement class containing members who received only a single unwanted text message was proper because *GoDaddy* involved a nationwide class action, and those class members would have “a viable claim in their respective [jurisdictions]” even if such claims would be barred “had they been brought individually in the Eleventh Circuit.” See *Drazen v. GoDaddy.com, LLC*, Docket No. 1:19-cv-00563 (S.D. Ala. Aug 21, 2019).

On appeal, the Eleventh Circuit held that the court was bound to apply its precedent, not that of other circuits: “Any class definition that includes members who would never have standing *under our precedent* is a class definition that cannot stand.”

Approaching Class Certification Moving Forward

While the courts’ renewed focus on standing has been a positive development for defendants in many ways, *GoDaddy* illustrates why standing can be a double-edged sword. At the settlement phase, a defendant’s interest is in achieving finality and ensuring that it has the broadest release possible so that it cannot be sued for the same conduct in the future. But *GoDaddy* may now find itself with an incomplete release due to the Eleventh Circuit’s requirement of a refined class definition.

With *GoDaddy* on the books, it is now more important than ever for defendants to ferret out and challenge any lurking standing issues at an earlier phase of a case. By mounting a standing challenge at an earlier phase in the litigation, defendants will at least go into settlement negotiations with open eyes about the extent and value of any release it might obtain.

For defendants wishing to litigate, the *GoDaddy* decision confirms that defendants can and should raise potential standing complications at class certification stage. As the court noted in describing its prior decision in *Cordoba*, “the standing analysis of unnamed class members” may be “located” at “the certification stage in Rule 23” or as a “standalone” requirement under Article III.

The court further read *TransUnion* as “affirm[ing]” that “all plaintiffs within the class definition must have standing.” If absent class member standing is required in connection with class certification under Rule 23(e), it would seem incongruous—to say the least—not to permit defendants to challenge Rule 23(b)(3)’s predominance requirement based on individual questions about standing when a plaintiff files an opposed motion for class certification. Defendants should accordingly consider standing to be another arrow in their quiver for purposes of defeating certification.

Conclusion

In the event that class settlement—rather than opposing class certification—is the goal, litigants would do well to confer with one another to ensure that the class is defined appropriately. And if the class definition is too broad to satisfy Article III's standing requirements, litigants could consider creative options, including refiling the action in state court, as many state constitutions do not contain standing requirements analogous to Article III.

The reach of *GoDaddy* remains to be seen. But we know for certain that class member standing is an important consideration in any class action—one that litigants ignore at their peril.