

U.S. Supreme Court Limits the Scope of "Actual Damages" in the Federal Privacy Act

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In its March 28 decision in Federal Aviation Administration v. Cooper, the U.S. Supreme Court interpreted the federal Privacy Act of 1974 and held that the term "actual damages," as used in the Act, does not include damages for mental or emotional distress. Because of its chameleon-like quality, the meaning of the term "actual damages" was considered in the particular context in which it appeared. The Court then found that, because Congress declined to authorize general damages for a violation of the Act, it was reasonable to infer that it intended "actual damages" to mean special damages for proven pecuniary loss.

The U.S. Supreme Court, in a 5 to 3 decision, in *Federal Aviation Administration v. Cooper*, ___ U.S. ___ (March 28, 2012), held that the Privacy Act of 1974, 5 U. S. C. §552a (the "Act"), "does not unequivocally authorize damages for mental or emotional distress and therefore does not waive the Government's sovereign immunity from liability for such harms." The Act contains a comprehensive and detailed set of requirements for the management of confidential records by Executive Branch agencies. If an agency fails to comply with those requirements "in such a way as to have an adverse effect on an individual," the Act authorizes the individual to bring a civil action against the agency. The agency is liable for "actual damages" for "intentional or willful" violations. In reaching its decision, the Court decided that "actual damages," as used in the Act, does not include damages for mental or emotional distress. The decision reversed the Ninth Circuit Court of Appeals. The FAA decision may prove helpful when interpreting other privacy laws that permit the recovery of "actual damages."

Underlying Action and Ninth Circuit Ruling

When applying for renewals of his pilot's license, Stanmore Cooper failed to disclose that he had been diagnosed with a human immunodeficiency virus (HIV) infection and was taking antiretroviral medication. When he later applied for long-term disability benefits, he disclosed his condition to the Social Security Administration (SSA). In 2002, when the Department of Transportation (DOT) launched a joint criminal investigation with the SSA, it gave the SSA a list of names and other identifying information of 45,000 licensed pilots in California. The SSA compared the list with its own records and compiled a spreadsheet, which it then gave to the DOT. The spreadsheet revealed that Cooper had a current medical certificate, but

had also received disability benefits. After reviewing Cooper's files, the FAA concluded that it would not have issued a medical certificate to him had it known his true medical condition. The FAA revoked Cooper's medical certificate. He was then indicted for making false statements to a government agency.

Thereafter, Cooper filed a complaint alleging that the FAA, DOT and SSA violated the Act by sharing his records with each other. He alleged that the disclosure by SSA to the DOT of his confidential medical information had caused him "humiliation, embarrassment, mental anguish, fear and social ostracism, and other severe emotional distress"—he did not allege any pecuniary or economic loss. The District Court granted summary judgment in favor of the FAA and against Cooper, finding that the Act does not authorize the recovery of damages for non-pecuniary mental or emotional harm. Upon review, the Ninth Circuit reversed and remanded the matter, holding that "actual damages," as used in the Act, is not ambiguous and that "a construction that limits recovery to pecuniary loss" is not "plausible."

Supreme Court Finding

The U.S. Supreme Court found that, "[b]ecause the term 'actual damages' has this chameleon-like quality," it could not "rely on any all-purpose definition but must consider the particular context in which the term appears." It noted that the Act directs agencies to establish safeguards to protect individuals against the disclosure of confidential records "which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained." "Because the Act serves interests similar to those protected by defamation and privacy torts, there is good reason to infer that Congress relied upon those torts in drafting the Act." It found that the parallel between the Act and the common law torts of libel per quod and slander suggested that Congress intended the "actual damages" to mean "special damages." In defamation and privacy cases, "the affront to the plaintiff's dignity and the emotional harm done" are "called general damages, to distinguish them from proof of actual economic harm," which are called "special damages." It further found that any doubt about the plausibility of construing actual damages synonymously with special damages was put to rest by Congress' refusal to authorize general damages: "Congress left the question of general damages . . . for another day." (*Doe v. Chao*, 540 U. S. 614 (2004) (it was "beyond serious doubt" that general damages are not available for violations of the Act)). In addition, although the Privacy Protection Study Commission later recommended that general damages be allowed, Congress never amended the Act to include them.

The Court further recognized that the contrary reading of the Act by the Ninth Circuit was not inconceivable. But, because the Act waives the agencies' sovereign immunity, the question was whether it was plausible to read the Act, as the agencies proposed, to authorize only damages for economic loss. It concluded that Congress had not spoken unequivocally, waiving the government's sovereign immunity and, thus, it adopted an interpretation of "actual damages" limited to proven pecuniary or economic harm.

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