



# Fourth Circuit Rockets Certified Class Due to Lack of Article III Standing

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[Class Action](#)

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In a 2-1 recent published decision, the [Fourth Circuit](#) decertified a class, holding that every class member must be concretely harmed by an alleged statutory violation under the Supreme Court's seminal holding on Article III standing in [TransUnion v. Ramirez](#).

*Alig v. Rocket Mortgage, LLC* involved statutory and common law claims under West Virginia law by a proposed class of consumers against Quicken Loans, Inc. (now Rocket Mortgage, LLC), alleging that, in refinancing their home-mortgage loans, the consumers paid for "independent appraisals" that were not "independent" at all. In fact, the defendants provided to the appraisers the homeowners' own estimates of their homes' values, which they had provided in their loan application. The plaintiffs claimed that the inclusion of the borrowers' own estimates inflated the appraisals and so compromised the integrity of the appraisal process as to render their appraisals unreliable and worthless. The District Court certified a class of "[a]ll West Virginia citizens who refinanced mortgage loans with Quicken, and for whom Quicken obtained appraisals through an appraisal request form that included an estimate of value of the subject property," which amounted to 2,769 loans. The court then granted summary judgment to the plaintiffs and class members and awarded them more than \$10.6 million in statutory damages, among other relief.

On the first appeal, the Fourth Circuit affirmed the certification of the class and the award of summary judgment for statutory damages. The Supreme Court then granted the defendants' petition for a writ of certiorari, vacated the judgment, and remanded to the Fourth Circuit "for further consideration in light of *TransUnion*." On subsequent remand from the Fourth Circuit, the District Court entered a judgment reinstating its original judgment, reasoning that *TransUnion* "does not impede the class's showing on standing" because "[e]ach member of the class . . . paid . . . for an independent appraisal that they never received" and thus suffered a concrete

harm, as necessary for Article III standing.”

The defendants again appealed to the Fourth Circuit, arguing that although each class member may have paid a fee for an appraisal, there was no evidence that the appraisals were tainted such that they were rendered worthless. Accordingly, the plaintiffs and class members lacked standing to recover damages under *TransUnion* because they could not “rely on a ‘mere risk of future harm.’” The Fourth Circuit agreed and reversed, concluding “that the plaintiffs ha[d] not established that the class members, as borrowers, suffered a concrete harm as a result of the defendants’ transmission to appraisers of their home-value estimates.” The majority held that it was “plainly insufficient for the plaintiffs to argue that [the defendants] and [their affiliated appraisal management company’s] inclusion of borrowers’ home-value estimates on the form used to hire an appraiser created a risk that each class member would receive an inflated appraisal, which, in turn, would enhance *the risk* that they would wind up owing more on their refinanced mortgage loans than their homes were actually worth, which could, in turn, lead to concrete, real-world economic harm.” Further, the appraisals were not worthless because they “accomplished their designated purpose” in that the class members used them to refinance their homes. Thus, the majority held that the plaintiffs’ class-wide showing was “‘too speculative to support Article III standing’” under *TransUnion*.

The dissenting judge opined that the unnamed class members showed that their appraisals were affected by the defendants sharing home-value estimates to appraisers and then pressuring the appraisers to reach those same values, and that this was sufficient to establish standing.

The topic of Article III standing appears to remain of interest to the Supreme Court, which just [granted](#) a petition for certiorari on the question of whether a federal court may certify a class action under Rule 23(b)(3) when some members of the proposed class lack any Article III injury. These cases provide additional support for defendants in opposing class certification and merits issues related to standing of class members.

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