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## Seventh Circuit Limits Access to Federal Courts in Certain Breach of Contract Cases

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Last week, the Seventh Circuit handed defendants another tool to argue that plaintiffs lack Article III standing in breach of contract claims. Until recently, conventional wisdom was that a breach of contract itself, regardless of whether that breach caused actual harm was an injury sufficient to create Article III standing. But, in *Dinerstein v. Google, Inc.*, the Seventh Circuit held that the opposite is true.

In *Dinerstein v. Google, Inc.*, -- F.4th ----, 2023 WL 4446475 (7<sup>th</sup> Cir. July 11, 2023), Mr. Dinerstein brought a class action lawsuit against Google, the University of Chicago, and the University of Chicago medical center because he alleged that the hospital and university shared his personal medical information with Google without his permission. In fact, the university had provided anonymized medical information (including Mr. Dinerstein's) to Google as part of a research project. Mr. Dinerstein alleges that the university never obtained his consent – written or otherwise – for the third-party record disclosure. He argued that in exchange for his payment for services and his personal medical information, the university had agreed to protect and secure his information and by sharing it with Google, the university had failed to live up to its end of the bargain. But Mr. Dinerstein was unable to point to any *actual* harm he suffered because of the alleged breach. Assuming that the university had breached its agreement in the way that Mr. Dinerstein alleged, the Seventh Circuit concluded that a “breach of contract alone—without any actual harm—is purely an injury in law, not an injury in fact. And it therefore falls short of the Article III requirements for a suit in federal court.”

*Dinerstein* creates a potential split of authority on the question with the Seventh Circuit on one side and at least the Fifth Circuit on the other. See *Denning v. Bond Pharmacy, Inc.*, 50 F.4<sup>th</sup> 445, 451 (5<sup>th</sup> Cir. 2022). This decision calls on anyone litigating breach of contract cases in federal court to carefully review their cases to ensure the plaintiff has alleged actual, concrete harm. Given this ruling, parties can expect to see more standing challenges early in litigation in federal court, particularly in the Seventh Circuit.

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