

Debt Collection Messages Received on Cell Phone Gives Rise to Claim Under TCPA

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A woman who sued a debt collection agency -alleging that the numerous calls she received on cell phone violated the Telephone Consumer Protection Act- successfully showed that she had suffered enough injury for her case to continue. The debt collection agency, National Enterprise Systems, had moved to dismiss the TCPA claim on the grounds that the plaintiff lacked standing to bring a claim because she did not allege facts that indicate that she suffered an injury in-fact as a result of the phone calls. However, the Illinois court disagreed. It found that monetary harm could have been suffered by the plaintiff based on the use of the plaintiff's cell phone minutes and that such an evidentiary analysis was premature at this stage in the case. The court further found that standing can be premised upon non-monetary and non-physical injuries, including, in this case, nuisance and invasion of privacy. National Enterprise Systems also argued that the case should be dismissed because the complaint lacked sufficient detail to reasonably suggest that it had used an automatic telephone dialing system. However, the court denied the motion, concluding that it would unreasonable to require plaintiffs to gather specific evidence regarding the type of machine used to make the phone call at the pleading stage prior to the taking of discovery.

TIP: Keep in mind that if making a call to a cell phone, and using an auto-dialer, you will need the call recipients' prior express consent. Callers will not know if you are using an auto-dialer, so getting consent for all methods of cell phone calling can help avoid expensive discovery battles.

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