

Hospital Vendor Billing Calls Did Not Violate TCPA

DECEMBER 10, 2014

The U.S. Court of Appeals for the Eleventh Circuit recently decided in favor of Gold Coast Collection Bureau, Inc., a debt collection agency that used automated technology to call an indebted radiology patient on his cell phone. At issue was whether sufficient “express consent” under the Telephone Consumer Protection Act (TCPA) had been provided. The patient’s wife, when completing hospital admission documents, provided her husband’s personal information, including his mobile number. The wife signed the forms, which contained a notice that the hospital might use and disclose to third parties the patient’s information for treatment, billing or collection purposes. After receiving a debt collection call made by Gold Coast (which used an auto-dialer to place the call, bringing it under the TCPA), the patient sued Gold Coast. He argued that the company had failed to obtain his prior express consent, as required by the statute. The company argued that the calls fell within an exception to that express consent requirement, relying on a 2008 FCC declaratory ruling. In that ruling, the FCC had said that giving a cell phone number to a creditor during a transaction amounted to prior express consent by the cell phone owner to be contacted regarding the debt. The district court had held that the FCC’s interpretation narrowly applied to the consumer creditor context and not a medical setting, and further held that the FCC’s interpretation conflicted with the purpose of the TCPA. The Eleventh Circuit disagreed and reversed the district court’s ruling, finding that not only did the district court not have the authority to consider the validity of the FCC declaratory ruling, it also erred in narrowly interpreting the declaratory rule to exclude medical debt collection. Because the plaintiff’s wife provided his cell phone number and signed the forms, the Eleventh Circuit concluded that this factual situation fell squarely within the FCC declaratory ruling exception, and the district court did not have standing to question that ruling.

TIP: This case serves as a reminder of the significant class action activity surrounding the TCPA. Companies should carefully weigh the potential costs and benefits before electing to rely on a FCC declaratory ruling to use autodialed technologies to call mobile devices without prior express consent (and, in the case of marketing messages, prior express written consent).

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