

7th Circuit Holds That “Called Party” Means Current Subscriber of Cell Phone When Determining “Consent” Under the TCPA

Consumer & Class Action Litigation

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The U.S. Court of Appeals for the Seventh Circuit today issued its opinion in *Soppet vs. Enhanced Recovery Company LLC*, No. 11-1389, a case involving the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227. The TCPA prohibits automated telephone calls to cell phones where the “called party” did not “consent” to being called on his or her cell phone. The TCPA does not define the term “called party.” The appeal centered on the use of this term.

Both of the debtors involved in the case had provided their cell phone numbers to the creditor as alternative contact numbers. By the time the debts were assigned for collection, the cell phone numbers in question had been reassigned to the two plaintiffs in this case. After plaintiffs were called via an autodialer, they sued, arguing that they did not “consent” to being called on their cell phones. Defendant debt collector argued that it did not violate the TCPA because it had “consent” to call the numbers in question and that it had intended to call the debtors. The debt collector also argued that the term “called party” should apply to the “intended recipient of the call.” Plaintiffs disagreed, arguing that the term “called party” meant the current subscriber of the phone, not the original debtor who had provided consent in past.

The Seventh Circuit agreed with plaintiffs, holding that a debtor’s transmittal of a cell phone to a creditor “does not authorize perpetual calls to that number after it has been reassigned to someone else.” The court, however, stated that “[b]ill collectors need not abandon predictive dialers,” and suggested that “other options” existed to allow debt collectors to continue to utilize autodialers.

In its decision, the Seventh Circuit referenced an *amicus brief* that Hinshaw & Culbertson LLP had filed on behalf of ACA International.

Download to read: [Soppet vs. Enhanced Recovery Company LLC](#), No. 11-1389

For further information, please contact [David M. Schultz](#).

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