

Buccaneers Could Lose On and Off the Field: Attempt to Reverse Auction TCPA Class Settlement Batted Down by Eleventh Circuit

2 min read

Nov 7, 2017

A leading Plaintiff's TCPA firm filed a class action against the Buccaneers in 2013, arguing certain company faxes violated the TCPA. The faxes in question contained advertisements promoting football ticket sales, and were alleged to have been sent without consent. While the class certification motion was pending in the original class action, one of the plaintiff's attorneys left the firm and moved to another Plaintiff's firm.

A rather entertaining email exchange then ensued between lawyers at this new firm, in which they discussed cutting the original putative class counsel out of a settlement by filing suit with a new class representative and settling at a lower amount, in a plan they themselves described as "Machiavellian." Such attempts to "reverse auction" class settlements are frowned on by federal courts, and largely prevented by case law which gives preference to first-filed class actions.

In 2016, this second firm filed a new TCPA class action against the Buccaneers based on substantially the same facts as the 2013 class action, and shortly thereafter announced a \$25 million dollar settlement of the same, an amount far below what the settlement demands had been in the 2013 lawsuit. The 2016 case was filed long after the statute of limitation for the faxes at issue had expired, but as part of the settlement, the Buccaneers declined the penalty by waiving any statute of limitation defense.

Once the 2013 class representatives found out about the new class settlement, they moved to intervene, which was denied by the district court, as the Court decided that all issues could be addressed at a class fairness hearing. On appeal, the Eleventh Circuit held that the class representatives from the first class action should have been able to intervene in the newly filed class action. The opinion noted that the settlement of the second class action appeared to have been motivated by an attempt to grab attorney's fees instead of securing the best result in a class action.

The Eleventh Circuit’s opinion continues a clear preference for first-filed class actions and protects the right of putative class members to intervene at an early stage to challenge settlements that may not be in the best interest of the class as a whole. While the opinion focused on the infighting between the various Plaintiff firms, now that the Court has allowed intervention, the Buccaneers face additional hurdles when it comes to settling this class action at a discount.

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Topics

Class Action, TCPA