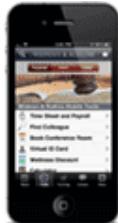


Class Action Litigation Report®

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Privacy

\$75M TCPA Class Gets Early OK; Attorney Outlines Lessons for Businesses



By Katie W. Johnson

Aug. 6 — An over \$75 million Telephone Consumer Protection Act class settlement—purportedly the largest of its kind—gained preliminary approval, and one attorney told Bloomberg BNA the pact is a wake-up call for businesses (*In re Capital One Tel. Consumer Prot. Act Litig.*, N.D. Ill., No. 1:12-cv-10064, settlement preliminarily approved 7/29/14).

Judge James F. Holderman of the U.S. District Court for the Northern District of Illinois concluded July 29 that the proposed settlement agreement with Capital One and other debt collectors was “fair, reasonable, and adequate” and said the agreement was likely negotiated in good faith.

At the time the proposed agreement was filed, the plaintiffs said the over \$75.4 million settlement fund was the “largest settlement cash sum—by far—in the 22-year history of the TCPA.”

“This settlement is a wake-up call to any business that regularly makes autodialed calls or sends out text messages,” Scott Shaffer, a partner at Olshan Frome Wolosky LLP in New York, told Bloomberg BNA Aug. 6.

Lessons From Settlement

Shaffer said he believes that the plaintiffs' statement that the \$75 million settlement is the largest TCPA settlement is accurate.

“With so many potential plaintiffs waiting for the chance to sue, businesses must carefully examine how they obtain numbers to be dialed or texted and also implement procedures to quickly deal with any opt out requests that are received, even oral ones,” Shaffer said.

He added that “businesses should make every effort to make sure they have accurate and up-to-date cell phone numbers, because calls and texts to wrong numbers or reassigned cell phone numbers can easily lead to a class-action lawsuit.”

Shaffer highlighted three lessons from the settlement.

First, businesses should make sure that they are contacting only those individuals who have expressly consented to receive such calls.

Second, companies should train personnel who handle consumer requests not to be called any longer and establish a process to address such requests.

Third, companies need to update their databases to ensure they aren't calling old numbers.

Enhancements to Calling Systems

The plaintiffs alleged that Capital One Bank (USA) NA, Capital One NA, Capital One Financial Corp., Capital One Services LLC and Capital One Services II LLC violated the TCPA by calling their mobile phones to collect credit card debts using an automatic telephone dialing system or an artificial or prerecorded voice without their prior express consent in violation of the TCPA, 47 U.S.C. § 227(b)(1)(A).

They also named three debt collection companies, Capital Management Systems LP, Leading Edge Recovery Solutions LLC

and AllianceOne Receivable Management Inc., as defendants.

The court conditionally certified a class of all U.S. individuals "who received a non-emergency telephone call from Capital One's dialer(s) to a cellular telephone through the use of an automatic telephone dialing system or an artificial or prerecorded voice in connection with an attempt to collect on a credit card debt from January 18, 2008, through June 30, 2014." The conditionally certified class also includes similar calls made by Capital One's vendors.

At the time the plaintiffs filed the proposed settlement agreement, they estimated that the settlement class would include approximately 21.2 million class members—a figure that might increase after the defendants provide updated class member data.

In addition to the \$75 million settlement fund, Capital One has enhanced its calling systems to prevent the calling of a mobile phone with an autodialer unless the caller provided prior express consent, according to the proposed agreement.

Following the deduction of attorneys' fees and costs, incentive awards and notice and claims administration costs from the settlement fund, class members who filed a qualified claim would receive a cash award in the range of \$20 to \$40 each. Each of the five class representatives would receive a maximum \$5,000 incentive award. Attorneys' fees and costs couldn't exceed more than 30 percent of the settlement fund.

Lieff Cabraser Heimann & Bernstein LLP served as interim co-lead counsel for the plaintiffs.

Terrell Marshall Daudt & Willie PLLC and Keogh Law Ltd. served as interim liaison counsel for the plaintiffs.

Faegre Baker Daniels LLP represented Capital One. Sessions, Fishman, Nathan & Israel LLC represented Capital Management. Hinshaw & Culbertson LLP represented Leading Edge. Paul Hastings LLP represented AllianceOne.

To contact the reporter on this story: Katie W. Johnson in Washington at kjohnson@bna.com

To contact the editor responsible for this story: Donald G. Aplin at daplin@bna.com

For More Information

Full text of the court's opinion is available at http://www.bloomberglaw.com/public/document/In_Re_Capital_One_Telephone_Consumer_Protection_Act_Litigation_Do/3.

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