

Olshan Obtains Significant Victory Against Verizon And OnStar

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NEW YORK, May 9, 2012 – Olshan attorneys, led by Scott A. Shaffer, obtained a significant legal victory against telecommunications giants Verizon and Onstar for clients Family Care, Inc. and Association Health Care Management, Inc. in the District of New Jersey. The decision established precedent as to who is protected under a key federal telemarketing statute, the Telephone Consumer Protection Act, or TCPA. United States District Court Judge Mary L. Cooper issued the ruling on Tuesday, May 8, 2012.

Olshan's clients marketed discount medical services. They conducted no telemarketing themselves but hired telemarketers, who in turn subcontracted some of the telemarketing to outside services. A rogue subcontractor made hundreds of thousands of automated calls, apparently without obtaining advance consent from the called parties. Lack of consent renders otherwise legal calls into illegal calls and the TCPA provides a remedy of up to \$500 per call, with treble damages for willful violations.

Plaintiffs Verizon Wireless and OnStar, LLC noticed the volume of automated calls coming over their networks and investigated. Because Verizon's investigation disclosed the products being sold, not the entity making the calls, Verizon and OnStar sued Olshan's clients in New Jersey federal court in 2009, seeking damages in excess of \$100 million for 863,000 illegal calls. Even when the identity of the rogue subcontractor was learned during discovery, the plaintiffs still sought to hold Olshan's clients responsible for the calls. After a preliminary injunction hearing, much discovery, extensive motion practice and three different complaints, Olshan attorneys filed a motion to dismiss. In a case of first impression, Judge Cooper granted Olshan's motion and dismissed the case with prejudice. Judge Cooper accepted Olshan's argument that Verizon Wireless and OnStar, as providers of telecommunications services, lacked statutory and prudential standing to sue under the TCPA, which was enacted to protect the rights of consumers. Judge Cooper was particularly swayed by Olshan's argument that the calls would have been legal if consent was obtained and "[a]s the moving defendants pointed out... the right to consent to a telemarketing call belongs to [the possessor] of the Verizon or OnStar brand

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device or phone number.”

Scott Shaffer commented, “This was a complex case but Judge Cooper was able to see past all the side issues and get to the heart of the case, which is that the TCPA, with its \$500 per-call penalty, is meant to protect consumers only. It is not a tool to enrich telephone companies that seek to bankrupt legitimate businesses who were wronged by unscrupulous telemarketing.”

Verizon Wireless and Onstar were represented by Philip Sellinger and Ian Marx at Greenberg Traurig, while OnStar was represented by McElroy Deutsch, Mulvaney & Carpenter