

\$4,000,000, Not Enough!: District Court Denies Final Approval for TCPA Class Settlement

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In 2017, Flagship Credit Acceptance LLC, was sued by Robert Ward on behalf of a class, for purported TCPA ATDS violations. They achieved a settlement. The court granted preliminary approval for a \$4,000,000 settlement fund on September 18, 2018. Notice to the class was given, a fund was set up, but the final approval was just denied.

The Court held the stakes of the case remained unearthed. The Court asked for additional details as to the Plaintiffs' claims, including a projection of provable damages, and Flagship's defenses and resources. The parties had submitted supplemental materials. The parties' also represented that "informal discovery" had been exchanged before their mediation, and that "confirmatory formal discovery" followed the agreement in principle reached at the mediation. Ultimately, the judge held that there was insufficient facts to evaluate the settlement. The hollow record was exacerbated by Flagship never responding to the complaint, or filing any motion that illuminated or narrowed the issues.

Furthermore, the Court was not convinced a \$4 million settlement fund was reasonable. The 50 page opinion described the TCPA's automatic (as opposed to discretionary) and uncapped \$500 per violation penalty. Yet, this \$4,000,000 settlement, measured against the returned claim forms, would provide class members with only about \$35 each. The Court highlighted that the insufficient discovery veiled whether Flagship's insurance would pick up part the settlement, and create the opportunity for additional money. Finally, in a smack of unfortunate timing, Flagship's recent press release boasted its assets topping off at nearly \$3 billion, thus, although the Plaintiffs' motion stated Flagship may go bankrupt if it had to pay more, the court doubted it.

The Court expressed its fondness for settlement structures with a range, citing a few cases with this approach, including [Charvat](#) (a case [we covered](#) where Defendants' fund entitled the projected class members to \$900 each) where parties agree to settlement fund floors and ceilings: protecting class members with a minimum settlement check, and protecting Defendants with a cap.

In sum, the information dearth, caused by a lack of discovery and motions, as well as the low settlement amount, compelled U.S. District Judge Michael Baylson to spurn the settlement.

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