

Continuing The Trend: Northern District of Illinois Again Holds A Predictive Dialer Must Have A Random Or Sequential Number Generator To Be An ATDS



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The Northern District of Illinois was one of the first courts after *ACA International* to hold that a telephonic system must have a random or sequential number generator to be an ATDS. The court recently doubled down on that position, holding that “[p]redictive dialers include a wide variety of devices, some of which do not qualify as an ATDS under the TCPA because they lack the capacity to randomly or sequentially generate numbers to dial.” *Zeidel v. Nat’l Gas & Elec., LLC*, 18-cv-06792, 2019 U.S. Dist. LEXIS 83988 (N.D. Ill. May 17, 2019).

That holding is significant, and 100% correct. Multiple courts have weighed in on whether a “predictive dialer” is an ATDS. The truth is that it depends. At its core, the phrase “predictive dialer” really just describes a system that uses advanced algorithms that control the timing and pacing of thousands of calls automatically. As the *Zeidel* court held, a system that has those capabilities *and* a random or sequential number generator is an ATDS, while a system that has those capabilities *but does not have* a random or sequential number generator is not an ATDS.

So whether a system is a predictive doesn't tell you whether it's an ATDS. What about the dialer in *Zeidel*?

The court ultimately held that the plaintiff alleged sufficient facts to survive a motion to dismiss. Rather than simply reciting the definition of an ATDS or attaching loaded labels, the plaintiff alleged that the content of the telemarketing calls appeared generic and impersonal, and that the outbound numbers were "spoofed." The court held, as have others, that these factual allegations were sufficient to allege plausibly that the calls were made with a random or sequential number generator.

Zeidel thus qualifies as a good loss. The motion to dismiss was denied, but the defendant established early in the case that the plaintiff needs to prove that its system has a random or sequential number generator to prevail.

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