THE NATIONAL LAW REVIEW

Two In A Row: Second New Ruling Holds Random and Sequential Number Generation Required to State TCPA Claim—Dismisses Case With Prejudice

Monday, June 17, 2019

As the Jester just reported, another court in the Northern District of Illinois found that random and sequential number generation is required to state an ATDS claim, restoring balance to the universe after *Espejo*. Well, now we are happy to report that the Eastern District of North Carolina has entered the fray and held on Friday that the TCPA's ATDS definition requires random or sequential number generation, no matter what *Marks* says.

In *Snow v. General Electric*, No. 5:18-CV-511-FL, 2019 U.S. Dist. LEXIS 99760 (E.D.N.C. June 14, 2019) the Court dismissed a complaint—*with prejudice*—where the texts at issue were targeted and non-random. As the Court put it: "Critically missing from the complaint are any facts permitting an inference that the text messages plaintiff received were sent using equipment that stores or produces numbers to be called "using a random or sequential number generator."

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Communications, Media & Internet
4th Circuit (incl. bankruptcy)

In reaching this conclusion the Court rejected any application of the FCC's 2003 and 2008 Predictive Dialer rulings noting that the Circuit Courts of Appeal have "uniformly" held that ACA International "set aside the FCC's interpretations of the definition of an ATDS, and that the court must return to interpreting the statutory definition of ATDS without that FCC guidance." The Court goes on to directly reject *Marks* in favor of the approach adopted in *Dominguez*: "The statute unambiguously incorporates a 'random or sequential number generator' into the definition of an ATDS... [t]hus, plaintiff must allege facts permitting an inference that defendants called her with equipment that has the capacity to store or produce numbers using a random or sequential number generator."

So there you have it—yet another tally mark finding the 2003 and 2008 FCC Orders were set aside by *ACA Int'l* and that random or sequential number generation is now required. Notably, *Snow* is the first case addressing the ATDS definition in North Carolina and appears to be the first case in the entirety of the Fourth Circuit to do so. Defendants in ACC country certainly needed some good news after the Fourth Circuit Court of Appeals applauded TCPA class actions a few weeks ago. It remains to be seen whether other district courts follow *Snow* or opt for other approaches. More to come.

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