Here’s a rare weekend post for you TCPAWorld.

You’ll recall that the Eleventh Circuit Court of Appeal recently interpreted the TCPA’s ATDS definition narrowly in Glasser, parting ways with the Ninth Circuit’s decision in Marks and paving the way for the great collapse of TCPA litigation in Florida.

Unsurprisingly, the Glasser plaintiff is seeking a re-hearing before the Eleventh Circuit en banc.

The identified issues in the petition:

- Whether the Telephone Consumer Protection Act (TCPA)’s restrictions on auto-dialed telephone calls apply to list-based autodialers, as held by Marks v. Crunch San Diego, LLC, 904 F.3d 1041 (9th Cir. 2018) and the dissenting panel opinion, or whether those restrictions apply only to autodialers that generate random or sequential telephone numbers, as held by the panel majority.

- Whether a computer in Kentucky that dials telephone numbers
automatically is nevertheless not an autodialer because it required a human in Florida to forward the list of numbers to the computer.

The arguments are recycled: Congressional intent and statutory language compel determination that ATDS covers predictive dialers. But that’s not true and Glasser explains why.

Official prediction—this will go nowhere. Glasser is an extremely well-reasoned opinion. We will obviously keep an eye on this for you, however.

Petition can be found here: Glasser Re-Hearing Petition.

Now back to the pool. (Oh wait, I forget you all don’t live in Southern California like I do.) Happy weekend.

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