



News

David Schultz Analyzes in ARM Compliance Digest: Appeals Court Rules One Ringless Voice Message is Sufficient for Plaintiff to Have Article III Standing

June 21, 2023

In the June 19, 2023 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discussed a decision by the U.S. Court of Appeals for the Sixth Circuit, which reversed a District Court ruling, determining that the receipt of a single ringless voicemail message is enough of a concrete injury for a plaintiff to have Article III standing to sue in federal court under the Telephone Consumer Protection Act (TCPA). Schultz examined the decision stating:

Is a single text, call, voice message, or ringless voicemail sent in violation of the TCPA sufficient for Article III standing? In 2019 and 2020, the Eleventh Circuit Court of Appeals issued opinions that held those did not create sufficient "injuries." *Grigorian v. FCA US LLC*, 838 F. App'x 390 (11th Cir. 2020); *Salcedo v. Hanna*, 936 F.3d 1162 (11th Cir. 2019). These rulings have helped defendants in opposing class certification and some individual claims.

The defendant in *Dickson v Direct Energy* pushed that angle successfully in an Ohio District Court. The trial judge in a TCPA case agreed with the Eleventh Circuit, holding that a telemarketer's ringless voicemail did not create standing. Unfortunately, the Sixth Circuit disagreed. The court reasoned that the receipt of even a single ringless voicemail resembled the common law tort of intrusion upon seclusion (i.e., the right to be left alone). That common law analog was sufficient to create Article III standing.

This is not an outlier ruling. Instead, it is looking like the Eleventh Circuit is in the minority on this issue, and that may not last long. In a bit of coincidental timing, the Eleventh Circuit sat *en banc* last week to hear oral arguments on whether its prior "one call" rulings were good law. The case is *Drazen v Pinto*, but is often referred to as the GoDaddy TCPA settlement. It is often hard to predict an outcome based on the oral argument. However, the judges made many comments that indicated they would undo the prior rulings and hold that there is sufficient Article III injury even for one contact in violation of the TCPA. If so, the "one contact" doctrine was a short term victory for TCPA defendants.

"Appeals Court Rules One RVM Enough for Plaintiff to Have Standing" was published by *ARM Compliance Digest* on June 19, 2023.

Attorneys

David M. Schultz

Service Areas

Consumer Financial Services

Offices

Chicago



[Read the full June 19, 2023 edition of the AccountsRecovery.net Compliance Digest.](#)