

Capital One Settles Largest TCPA Class Action for \$75M

Alysa Z. Hutnik

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Last week, a court preliminarily approved the largest class action settlement alleging violations of the Telephone Consumer Protection Act (TCPA). Capitol One, along with three debt collection agencies, agreed to pay more than \$75 million to settle a consolidated class action lawsuit alleging that the companies used an automatic telephone dialing system (ATDS) and/or artificial prerecorded voice to call consumers' cellular telephones without the prior express consent of those called.

Under the TCPA, prior express consent is required for any non-telemarketing call – such as a debt collection call – made to a mobile phone using an ATDS and/or an artificial prerecorded voice. (A higher standard – prior WRITTEN express consent – is required to make calls to cell phones using an ATDS or a prerecorded voice for any telemarketing).

In addition to alleging that the companies never received prior express consent, certain plaintiffs alleged that (1) their cell phone was called concerning another person's Capitol One account; (2) Capitol One was repeatedly asked to stop calling, but calls continued nonetheless; and (3) Capitol One obtained plaintiffs' cell number from a third party via skip tracing.

The settlement is a good reminder of the repercussions that may follow when a company has not closely reviewed and ascertained the sources from which it obtains phone numbers, whether any are cellular phone numbers and the likelihood that such numbers still belong to the customer (or have since been disconnected and reassigned), and are matched with the correct type of consent to be called. Even slight oversights in this area are exposing a number of companies to claims of potential violations (and massive financial exposure) under the TCPA.