



Kelley Drye Obtains Significant Victory by Successfully Defeating Class Certification in TCPA Action

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On August 5, 2014, the United States District Court for the District of Minnesota issued a decision denying class certification in a Telephone Consumer Protection Act (TCPA) fax case against Medtox Scientific, Inc. In an environment in which plaintiff's attorneys routinely file TCPA class action lawsuits seeking multi-million dollar awards and often obtaining substantial settlements, the denial of Plaintiff's motion to certify the class in this case represents an important victory.

The Court held that the class was not ascertainable because the Court would need to conduct an individualized inquiry to determine the "unique circumstances of each fax transmission." Such an inquiry is contrary to the purposes of Rule 23, which governs class action suits brought in Federal courts. The Court further held that Plaintiff could not meet the commonality requirements of Rule 23. The Court also noted that it had "serious reservations about the adequacy" of the lead Plaintiff and its law firm as class counsel to represent the putative class.

Although the fax at issue did not have a cover sheet, the intended recipient was a doctor who worked in Plaintiff's office. Plaintiff moved to certify a class under the TCPA of "[a]ll persons who (1) on or after four years prior to the filing of this action, (2) were sent telephone facsimile messages regarding lead testing services by or on behalf of Medtox and (3) which did not display a proper opt out notice." The Court held that the proposed class definition, which focused on those persons or entities who "were sent" the fax, was problematic because, as Plaintiff itself acknowledged, the recipient was not readily apparent. The Court rejected Plaintiff's argument that the possibility of multiple recoveries for each class member should not preclude class certification.

The Court held that to determine to whom each fax was sent "the court would need to delve into the unique circumstances of each case fax transmission." Because it "would take individualized discovery to determine the threshold issue of who was 'sent' each of the thousands of faxes at issue," the Court concluded that class certification was not proper.

In addition, the Court granted Defendants' partial motion to dismiss based on claims related to a similar fax because the Plaintiff admitted that it did not receive that particular fax and thus, the Court held, that Plaintiff did not have standing to assert any claim related to that fax.

The Defendants were represented by Kelley Drye partners [Robert I. Steiner](#) and [Geoffrey W. Castello](#).

The case is *Sandusky Wellness Center, LLC v. Medtox Scientific et al.*, case No. 12-cv-02066-DSD-JJG.