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4 QUESTIONS THAT MAY SIGNAL THE END OF TCPA CLASS ACTIONS

To Our Clients and Friends:

The Telephone Consumer Protection Act has long been a favorite of the plaintiffs privacy bar, as the act provides up to \$1,500 in damages per unwanted call.[1] That adds up very quickly in even the most modestly sized class actions.

Since the TCPA was enacted in 1991, the Federal Communications Commission has for years essentially updated the law through its own orders. These orders have applied the TCPA to technology like text messages and app-to-text messaging, none of which was even a glimmer in the eyes of those who passed the law decades ago.

Similarly, although the TCPA was passed during a time where an automatic telephone dialing system, or autodialer, was limited to a machine that would randomly generate 10 digits to be called, the FCC determined that an autodialer is not limited to those systems. Moving beyond the plain language of the statute, the FCC said that a predictive dialer would constitute an autodialer so long as the system stores numbers and automatically dials them.

Several of the circuit courts across the country then essentially inoculated the FCC's interpretations from being questioned in TCPA litigation. These courts, adopting a narrow reading of the Hobbs Act's mandate that courts of appeals have "exclusive jurisdiction to ... determine the validity of all final orders of the [FCC]," held that they were not able to upset the FCC's determinations because they were prohibited from reviewing the FCC's orders in private TCPA litigation.[2]

But as Timothy Loose, Jeremy Smith, Wesley Sze and Danielle Hesse explain in a recent *Law360* article, the times are changing, and the tide is now moving toward limiting the reach of the TCPA and the FCC's expansive interpretations. Moreover, the viability of the entire statute will be questioned by the U.S. Supreme Court. The end of the TCPA class action frenzy may be near.

4 Questions That May Signal The End Of TCPA Class Actions (*click on link*)

[1] 47 U.S.C. § 227(b)(3).

[2] 28 U.S.C. § 2342(1).

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Gibson, Dunn & Crutcher's lawyers are available to assist with any questions you may have regarding these issues. Please feel free to contact the Gibson Dunn lawyer with whom you usually work, or the authors:

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