



The Telephone Consumer Protection Act

A Telephone Consumer Protection Act (TCPA) class action claim can expose a company to catastrophic liability. Originally passed to serve as a deterrent to spam telephone calls and fax advertisements, the TCPA has become a haven for plaintiffs' class action attorneys looking to take advantage of the statute's statutory damages provisions, which can range **from \$500 to \$1,500 per violation**, even when the actual damages suffered are nowhere near the statutory damages award. Combine this with the rapid pace of change in regulations through FCC Rulings and Orders, and it becomes obvious that choosing counsel with significant experience in the TCPA and class actions is of the utmost importance.

Hinshaw has defended well over 100 TCPA cases, including a large number of class actions throughout the country, and has received favorable decisions from a variety of courts. Most of our decisions involving TCPA claims are from the United States District for the Northern District of Illinois for the simple reason that this court sees more TCPA class actions than any other court in the country. Importantly, our experience in litigating TCPA class actions in the Northern District of Illinois has allowed us to develop litigation strategies for similar actions filed throughout the country.

Please see our Representative Matters page for a sample of cases wherein Hinshaw obtained favorable rulings in TCPA cases.

Experience

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Below are brief descriptions of just a few cases wherein Hinshaw obtained favorable rulings in TCPA cases:

- **Hinshaw obtains summary judgment on TCPA claim.** Hinshaw defended a debt collection agency client in a Northern District of Illinois court against claims that its client violated the TCPA and other consumer protection statutes. Plaintiff alleged Hinshaw's client made calls to plaintiff's cell phone using an automatic telephone dialing system (ATDS) without plaintiff's prior express consent. Hinshaw filed a motion for summary judgment by arguing that its client did not use an ATDS, but even if it did, it had prior express consent. In response to defendant's summary judgment motion, plaintiff abandoned many of his claims, including his TCPA claim, in an attempt to avoid an adverse ruling.
- **Hinshaw defeated class certification of a nationwide TCPA class in an action that was filed in the Southern District of California.** Three representative plaintiffs sought certification of three nationwide classes,

Service Area Contacts

Justin M. Penn
312-704-3000
jpenn@hinshawlaw.com

John P. Ryan
312-704-3464
jryan@hinshawlaw.com

David M. Schultz
312-704-3527
dschultz@hinshawlaw.com

Attorneys

Ruddy S. Abam

Samuel C. Bodurtha

Bryan T. Brown

Natalie Burris

Margaret J. Cascino

Hayden B. Farmer

Barbara Fernandez

Eric J. Giglio

Taylor Hennington

Matthew Lindsey

Gabrielle Mannuzza

Michael J. McKleroy

Concepcion A. Montoya

Brian A. Paino

J. Michael Paulino

Peter E. Pederson

Alfredo "Fred" Ramos

Jessica A. Riley

Megan E. Ryan

Kate Scolaro

Todd P. Stelter

Gregg D. Stevens

Mohamed F. Sweify



including an autodialer class, a prerecorded voice class and a skip trace class. In response to plaintiff's motion for class certification, Hinshaw provided the court with evidence to show that the underlying debts of the three representative plaintiffs arose in varying contexts, in connection with different underlying creditors and also under significantly different circumstances. Hinshaw also argued that the three representative plaintiffs had given prior express consent so there was no violation of the TCPA. The court agreed with Hinshaw's arguments and held that the evidence offered by Hinshaw underscored the need for individualized inquiries to determine a variety of issues that Hinshaw raised. Accordingly, the court held that individualized inquiries predominated over any issue common to the class and denied class certification.

- **Hinshaw obtains summary judgment on TCPA claim.** Plaintiff instructed the consumer reporting agencies to place a "fraud alert" in her credit reports. This message advised people accessing her credit reports that she was the victim of identity theft and that potential creditors should verify her identity by calling her cell phone number before establishing a credit line using her personal information. When a third party tried to open a DirecTV satellite television account using her Social Security number, DirecTV accessed her credit report, received the fraud alert message, and obtained her cell phone number from the fraud alert. Plaintiff alleged that Hinshaw's client violated the TCPA because Hinshaw's client allegedly called her using an ATDS and a prerecorded message without her prior express consent. Hinshaw argued that the TCPA allows businesses to use a prerecorded message (and/or an ATDS) as long as the called party has given "prior express consent" to receive such calls. The court agreed with Hinshaw's arguments and granted summary judgment for defendants because plaintiff gave "prior express consent" to be contacted on her cell phone when she instructed potential creditors to verify her identity by calling the number assigned to her cell phone.
- **Hinshaw obtains summary judgment against an entire class.** Plaintiff provided his cell phone number to a hospital when he received treatment. After he failed to pay the hospital's bill, the hospital referred his debt to its collection agency and provided the collection agency with the plaintiff's cell phone number. Plaintiff alleged that the collection agency used an ATDS to call his cell phone without his prior express consent. Hinshaw filed a motion for summary judgment against Plaintiff and the entire class. Hinshaw argued that pursuant to previous decisions from the FCC when a consumer releases his cell phone number to a creditor in connection with a debt, he consents to receive auto-dialed calls from a collection agency seeking payment of the debt. Plaintiff conceded that he provided the hospital with his cell phone number, but he argued that the collection agency did not have consent for the calls because the Health Insurance Portability and Accountability Act (HIPAA) prohibited the medical creditor from releasing his number to the collection agency. The court agreed with Hinshaw's arguments and granted summary judgment against Plaintiff and the entire class.
- **Hinshaw wins summary judgment based upon a consent argument.** The plaintiff registered for a PayPal account and supplied his cell phone number. In the PayPal user agreement, plaintiff agreed that PayPal could contact him at that number using autodialed and prerecorded message calls. When he failed to pay a debt owed to PayPal, his debt was assigned to

Aimee G. Szygenda

C. Charles Townsend

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a collection agency. Plaintiff filed a TCPA class action against the collection agency after the collection agency allegedly used a predictive dialer to call him on his cell phone in an attempt to collect the debt. Hinshaw argued that its client stepped into the shoes of PayPal, so if PayPal had consent, the collection agency as assignee of PayPal had consent. The Court agreed and held that for purposes of pursuing the debt, the collection agency stepped into the shoes of PayPal, and therefore the plaintiff had consented to receive the calls from the collection agency at the number he supplied to PayPal. As a result, the court entered summary judgment in favor of Hinshaw's client.

- **Hinshaw wins a motion to dismiss based upon a consent argument.** Plaintiff alleged that Hinshaw's client violated the TCPA by calling his cell phone using an ATDS and/or a prerecorded message without his prior express consent. Hinshaw argued that the court could utilize the consent documents in analyzing its motion to dismiss even though the documents were outside the pleadings. The court agreed and granted Hinshaw's motion to dismiss because the documents attached to Hinshaw's motion established that Plaintiff provided prior express consent, so there was no violation of the TCPA.
- **Hinshaw obtains a ruling to strike an alleged nationwide class.** Plaintiff alleged that he received calls from collection agency for another individual's debt. Although Plaintiff's claim was based upon a wrong party call, Plaintiff attempted to represent a nationwide class of any one that the agency called without their prior express consent. Hinshaw filed a motion to strike Plaintiff's class definition by arguing that Plaintiff could not represent such a broad class which included alleged TCPA claims that were unlike his own. At the time Hinshaw filed the motion to strike there were a limited number of opinions wherein a court granted a motion to strike a TCPA class definition. The court agreed with Hinshaw's argument and granted its motion to strike because Plaintiff's class definition improperly included people who allegedly had TCPA claims not based upon a wrong number theory.
- **Hinshaw obtains a ruling to deny class certification.** Plaintiff alleged that the Hinshaw's client violated the TCPA by making calls to his cell phone without his prior express consent. The defendants produced a sample, which showed that they had consent for a certain percentage of the alleged class members. The defendants used the aforementioned sample to argue that a class could not be certified because questions about whether a putative class member consented presented individual inquiries. As a result, the court denied Plaintiff's motion for class certification.

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Events

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Publications

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