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SUPREME COURT RULES THAT AUTOMATED PHONE CALL LAWSUITS MAY BE BROUGHT IN FEDERAL OR STATE COURTS

The United States Supreme Court recently held that a person who receives an automated debt-collection call on his cellular phone in violation of the federal Telephone Consumer Protection Act ("TCPA") can choose to file a lawsuit in state *or* federal court.[1] The unanimous ruling resolved a split among the federal courts. The *Mims* decision is important because it may portend additional litigation under the TCPA given that plaintiffs and defendants will have increased access to federal courts.

TCPA

The TCPA[2] was enacted in 1991 after consumer complaints about abuses of telephone technology. According to the Court, "Congress determined that federal legislation was needed because telemarketers, by operating interstate, were escaping state-law prohibitions on intrusive nuisance calls."[3]

The TCPA bans certain invasive telemarketing practices, including:

- Placing automated calls to private residences or cellular telephones without prior authorization;
- Sending unsolicited facsimile transmittals without a preexisting business relationship; and
- Using auto-dialers to call simultaneously more than one of a business's phone lines.

The statute authorizes state attorneys general to bring civil actions to enjoin prohibited practices and recover damages on residents' behalf.[4] The statute also allows lawsuits by individuals for statutory violations or violations of Federal Communications Commission regulations.[5] In actions by private litigants, the statute provides for damages of $500 or actual monetary loss incurred, whichever is greater, for each violation of the Act or the regulations promulgated pursuant to the Act.[6]

THE LITIGATION

Plaintiff Mims sued a debt-collection agency (Arrow Financial Services, LLC) in federal court in Florida. Mims alleged that the agency repeatedly used an automatic telephone dialing system or prerecorded or artificial voice to call his cellular phone without his consent. Mims invoked federal-question jurisdiction under 28 U.S.C. § 1331, which provides that federal courts may hear claims "arising under the … laws … of the United States."

The United States District Court for the Southern District of Florida dismissed the lawsuit for lack of subject matter jurisdiction in light of the TCPA's statement that a private litigant "may" seek redress "in an appropriate court of [a] State," "if [such action is] otherwise permitted by the laws or rules of court of [that] state."[7] The United States Court of Appeals for the Eleventh Circuit affirmed the dismissal. This holding aligned the Eleventh Circuit Court with federal appellate courts from the Second, Third, Fourth, Fifth, and Ninth Circuits, which had all previously held that federal courts lacked federal-question jurisdiction over private TCPA actions.[8]

THE SUPREME COURT'S ANALYSIS

The Supreme Court explained that "[t]he question presented is whether Congress' provision for private actions to enforce the TCPA renders state courts the *exclusive* arbiters of such actions."[9] The Court concluded that there was "no convincing reason to read into the TCPA's permissive grant of jurisdiction to state courts any barrier to the U.S. district courts' exercise of the general federal-question jurisdiction they have possessed since 1875."[10] Accordingly, the Court held that federal and state courts have concurrent jurisdiction over private TCPA lawsuits.[11]

In reaching its determination, the Court examined the legal landscape in which Congress passed the TCPA, looking to Congressional findings related to certain aspects of telemarketing as well as states' efforts to restrict telemarketing. "Although over half the States had enacted statutes restricting telemarketing, Congress believed that federal law was needed because 'telemarketers [could] evade [state-law] prohibitions through interstate operations.'"[12]

The Court's decision noted that Congress provided "complementary" means of enforcing the TCPA. First, a state attorney general may "bring a civil action on behalf of [State] residents" if the Attorney General "has reason to believe that any person has engaged … in a pattern or practice" of violating the TCPA or related FCC regulations.[13] As to those claims, the statute expressly provides that "[t]he district courts of the United States … have *exclusive* jurisdiction" under § 227(g)(2).[14]

Second, the Court noted that a private litigant "*may*, if otherwise permitted by the laws or rules of a court of a State, bring in an appropriate court *of that State*" a private action.[15]

The Court found that because the TCPA, a federal law, creates the right of action and provides the rules of decision, a TCPA claim "aris[es] under" the laws of the United States under 28 U.S.C. § 1331.[16] In rejecting the argument that the TCPA vested jurisdiction over private suits exclusively in the state courts, the Supreme Court noted that "there is a deeply rooted presumption in favor of concurrent state court jurisdiction, rebuttable if Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim."[17] That presumption can be overcome by explicit statutory directive, unmistakable implication from legislative history, or by "clear incompatibility" between state-court jurisdiction and federal interests.[18]

The Court considered the argument that the TCPA's reference to state courts puts individual claims within the exclusive purview of those tribunals. The Court noted the "general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive."[19] In bolstering its conclusion, the Court cited *Verizon Maryland Inc. v. Public Service Commission of Maryland*, where the Court held that a provision in the Telecommunications Act of 1996 granting federal courts jurisdiction over certain claims brought under the Act did not deprive federal courts of Section 1331 jurisdiction over other claims brought under the Act.[20]

In comparison, the Court referenced Title II of the Social Security Act, a different statutory scheme, where Congress has provided a track for a federal claim that is exclusive of federal-question jurisdiction under Section 1331.[21] The Court found that Congress did not do that in the TCPA. "Title 47 U.S.C. § 227(b)(3) does not state that a private plaintiff may bring an action under the TCPA 'only' in state court, or 'exclusively' in state court," the Court highlighted.[22] The Court found further support that state court jurisdiction under 47 U.S.C. § 227(b)(3) was not meant to be exclusive by comparing it to the TCPA's provision for "*exclusive* [federal court] jurisdiction" over state attorneys general lawsuits.[23]

So why did Congress include the language that private litigants "may" seek redress in state court if there would have been concurrent jurisdiction even absent this reference to state courts? "Congress may simply have wanted to avoid any argument that in private actions, as in actions brought by State Attorneys General, federal jurisdiction is exclusive."[24] The provisions also "arguably" gave states leeway to decide whether they would entertain claims under the TCPA in state courts.[25] The Court found that the views of the bill's sponsor did not change the result.[26] Finally, the Court rejected the defendant's "floodgates argument," that federal courts could be inundated with small-value TCPA claims, stating that this argument "assume[d] a shocking degree of noncompliance with the Act" and overlooked the higher civil filing fee in federal courts.[27]

THE IMPACT OF THE *MIMS* DECISION

It remains to be seen what *Mims*'s impact will be on the number of private TCPA cases filed, and whether there will be a dramatic shift in filings that initiate in state or federal courts. As a whole, even if the number of filings does not increase, it is likely that the number of cases ultimately litigated in federal courts will increase because now either party can take the case to federal court (i.e., plaintiffs can file there in the first instance or defendants can remove cases filed in state courts on federal-question grounds).

Under *Mims*, federal courts also may see an increase in TCPA filings as plaintiffs try to take advantage of the four-year statute of limitations available for claims arising under federal law.[28] Some state courts have reasoned that courts may close their doors to TCPA claims prior to the expiration of the federal statutory period because the TCPA provides that private claims may be brought in state court "if otherwise permitted by the laws or rules of court of a State."[29]

Finally, the availability of federal-question jurisdiction for TCPA claims may lead to more class action lawsuits based upon violations of the TCPA, especially in states that have prohibited the litigation of TCPA claims through class action suits.[30]

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ENDNOTES

1 *See Mims v. Arrow Fin. Services, LLC*, No. 10-1195, 565 U.S. ___, 132 S. Ct. 740, 745 (Jan. 18, 2012).
2 47 U.S.C. § 227.
3 *Mims*, 132 S. Ct. at 742.
4 47 U.S.C. § 227(f)(1).
5 47 U.S.C. § 227(b)(3).
6 47 U.S.C. §§ 227(b)(3), (c)(5).
7 47 U.S.C. §§ 227(b)(3), (c)(5).
8 *See Murphey v. Lanier*, 204 F. 3d 911, 915 (9th Cir. 2000); *ErieNet, Inc. v. Velocity Net, Inc.*, 156 F.3d 513, 519 (3rd Cir. 1998); *Foxhall Realty Law Offices, Inc. v. Telecomm. Premium Services, Ltd.*, 156 F.3d 432, 434 (2d Cir. 1998); *Chair King, Inc. v. Houston Cellular Corp.*, 131 F.3d 507, 514 (5th Cir. 1997); *Int'l Sci. & Tech. Inst. v. Inacom Comm., Inc.*, 106 F.3d 1146, 1158 (4th Cir. 1997). *But see Charvat v. EchoStar Satellite, LLC*, 630 F.3d 459, 463-65 (6th Cir. 2010) (holding that federal courts have federal question jurisdiction to hear TCPA claims); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 447 (7th Cir. 2005) (same).
9 *Mims*, 132 S. Ct. at 744 (emphasis in original).
10 *Id.* at 745.
11 *Id.*
12 *Id.* (quoting the TCPA, 105 Stat. 2394, note following 47 U.S.C. § 227 (Congressional Findings) (alteration in original)).
13 *See* 47 U.S.C. § 227(g)(1).
14 See 47 U.S.C. § 227(g)(2) (emphasis added).
15 47 U.S.C. § 227(b)(3).
16 *Mims*, 132 S. Ct. at 748 (alteration in original).
17 *Id.* (internal quotations omitted).
18 *Id.*
19 *Id.* at 749 (internal quotation omitted).
20 *Id.* at 750 (citing *Verizon Md. Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 642 (2002)). The Court in *Verizon* considered whether federal district courts had federal question jurisdiction to review a state commission's order for compliance with federal telecommunications law. *See Verizon Md.*, 535 U.S. at 641-42. Section 252(e)(6) of the Telecommunications Act of 1996 provides in relevant part: "In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section." Verizon sought review of a state commission's order for compliance, not a determination regarding an agreement or statement, but Verizon argued that a commission's order for compliance was a "decision" under Section 252(e)(6) and that the district courts therefore had jurisdiction to consider whether the order met the requirements of federal law. *Verizon Md.*, 535 U.S. at 641-42. The Court refused to consider this argument, stating: "Whether the text of § 252(e)(6) can be so construed is a question we need not decide. For we agree with the parties' alternative contention, that even if § 252(e)(6) does not *confer* jurisdiction, it at least does not *divest* the district courts of their authority under 28 U.S.C. § 1331 to review the Commission's order for compliance with federal law." *Id.* at 642. (emphasis in original).
21 *See* 42 U.S.C. § 405(h) ("No action ... shall be brought under [§ 1331] to recover on any claim arising under [Title II of the Social Security Act].").
22 *Mims*, 132 S. Ct. at 750.
23 *Id.* (emphasis added).
24 *Id.* (internal quotation omitted).
25 *See id.* at 751. The language in the statute grants state court jurisdiction "if otherwise permitted by the laws or rules of court of a State." *See* 47 U.S.C. § 227(b)(3).
26 *See Mims*, 132 S. Ct. at 752.
27 *See id.* at 752-53.
28 *See* 28 U.S.C. § 1658(a).
29 *See, e.g.*, *Giovanniello v. ALM Media, LLC*, 660 F.3d 587, 597 (2d Cir. Oct. 17, 2011) (applying Connecticut's two-year statute of limitations applicable to unsolicited fax cases to bar plaintiff's TCPA claims); *Dale L. Smith & Assoc., LLP v. Advanced Placement Team, Inc.*, 169 S.W.3d 816, 822-23 (Tex. Ct. App. 2005) (applying Texas' two-year statute of limitations for general tort claims to TCPA claims).
30 *See, e.g., Local Baking Prods., Inc. v. Kosher Bagel Munch, Inc.*, 23 A.3d 469, 474-76 (N.J. Super. Ct. App. Div., July 19, 2011) and the cases cited therein (holding that class actions are not available for TCPA claims).