

CASE STUDIES

Successful Result for Client in TCPA Class Action

Telephone Consumer Protection Act Class Action

Client industry: Pest Control

Type of case: Telephone Consumer Protection Act Class Action

Court: District Court; Sixth Circuit Court of Appeals

Result: Denial of Class Action Certification; \$2,500 Settlement

A suit was filed against our client claiming a violation of the federal Telephone Consumer Protection Act. The plaintiff claimed the company violated the Act by calling her even though she was on the company's do not call list and on an automatic telephone dialing system. We moved to dismiss based upon terms of her customer agreement, which contained a waiver of class action claims and an agreement to arbitrate. The District Court granted that motion and dismissed the case. However, the Sixth Circuit reversed the District Court on the basis the contract with the plaintiff had ended by the time the calls were made.

The case was remanded to the District Court where the District Court then dismissed the do not call claim for her failure to adequately prove she was using her cell phone as a residential telephone. That left the claim the company improperly used an automatic telephone dialing system. The parties took Federal Rule of Civil Procedure 30(b)(6) depositions of the company's representatives, and before the parties engaged in expert witness discovery, a public agreement to settle the entire case for \$2,500 was reached. No class action was certified.