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COURT RULES COLLECTION CALLS NOT SUBJECT TO TCPA PROHIBITION AGAINST PRERECORDED MESSAGES TO RESIDENTIAL LINES

The United States District Court for the District of Maryland has held that debt collection calls are not subject to the federal Telephone Consumer Protection Act ("TCPA") prohibition against prerecorded messages. *Worsham v. Acct. Receivables Mgmt., Inc.*, Civil No. JKB-10-3051, 2011 WL 58773102, at *5 (D. Md. Nov. 22, 2011). In *Worsham*, a debt collector called the plaintiff multiple times and left prerecorded messages in an attempt to communicate with or locate the plaintiff's sister-in-law. Evidently, these calls were made to the plaintiff's residential phone and not his cellular telephone. The prerecorded message indicated that the call was for the sister-in-law and instructed the called party to press "one" if the called party was the sister-in-law or "two" if the called party was not the sister-in-law. Someone at the plaintiff's number answered one of the calls and pressed two, but hung up before the call could be transferred to a live operator.

The plaintiff sued the debt collector claiming, among other things, that the debt collector violated the TCPA prohibition against prerecorded messages. The TCPA specifically provides that no person or entity may initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless an exemption applies. The TCPA exempts certain calls, including prerecorded calls to residential lines made for a commercial purpose that do not include or introduce an unsolicited advertisement or constitute a telephone solicitation. 47 C.F.R. § 64.1200(a)(2)(iii).

The court found that the above exemption was applicable because the plaintiff did not introduce any evidence that the messages included the transmission of an unsolicited advertisement. For this reason, the court granted the defendant's motion for summary judgment on the plaintiff's TCPA claims.

Collectors should keep in mind, however, that calls that do not include unsolicited advertisements are not exempt from the entire TCPA, but rather only within the scope of the specific TCPA exemption for calls to *residential lines* set forth above. Accordingly, a

collector could be subject to the separate TCPA prohibition against calling a *cellular* telephone number with an autodialer or prerecorded message and without prior consent, whether or not the call includes an unsolicited advertisement. ☐

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