



SECOND CIRCUIT REFUSES TO REHEAR TCPA CONSENT CASE

On October 20th, the U.S. Court of Appeals for the Second Circuit denied without explanation a plaintiff's request to rehear a case that addressed whether the Telephone Consumer Protection Act ("TCPA") permits a consumer to revoke "prior express consent" unilaterally when the consent is included in a binding contract. *Reyes v. Lincoln Automotive Fin. Servs.*, No. 16-2104, 2017 WL 2675363 (2nd Cir. June 22, 2017); see DT ALERTS of July 5, 2017 and July 28, 2017.

Relying on common law principles, the Second Circuit had ruled that consent under the TCPA is not unilaterally revocable by a consumer when the consent is in a binding contract. The plaintiff had argued that rehearing is warranted because the court's decision contradicts other circuits' decisions, the Federal Communication Commission's interpretations of the TCPA and the legislative intent of the TCPA.

Despite this helpful decision, TCPA consent remains a litigious area. Ensuring that a party has proper TCPA consent to place a call or send a text message can involve a number of considerations especially when third-party vendors are involved. We frequently advise clients on federal and state laws regulating telemarketing and non-telemarketing communications with business and consumer customers. □

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