



## Blogs / Litigation and Commercial Law

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### Latest Posts

#### **08.17.2018** [Another court rules that contractual consent to be called using an ATDS cannot be unilaterally revoked](#)

By Patrick T. McLaughlin

The Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA), makes it unlawful for any person, absent the "prior express consent of the called party," to make non-emergency calls using any Automated Telephone Dialing System (ATDS) to any telephone number assigned to a cellular telephone service. Anyone who violates the TCPA may be liable for "actual monetary loss" or \$500 in damages for each violation, whichever is greater.

**05.30.2018** [Insurance Benefits – Unreasonable Delay and Denial. Supreme Court of Colorado Decides Three Cases Against Insurance Companies.](#)

By John Watson

In a trio of case opinions issued on May 29, 2018, – all written by Chief Justice Nancy Rice who will retire in June – the Colorado Supreme Court ruled against the arguments of insurance companies.

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**08.22.2017** [Ninth Circuit: Seller is not liable for calls made by telemarketer in violation of the Telephone Consumer Protection Act](#)

By Patrick T. McLaughlin

In a recent decision that may affect any company that sells products or services using telemarketers, the United States Court of Appeals for the Ninth Circuit affirmed the district court's grant of summary judgment in *Jones v. Royal Admin. Servs., Inc.* in favor of a product seller, holding the seller was not vicariously liable for calls made by a telemarketer in violation of the Telephone Consumer Protection Act<sup>[1]</sup> (TCPA) because the telemarketer was an independent contractor.

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**08.16.2017** [Eleventh Circuit: Consumers may “partially revoke” consent to be called by automatic dialing systems](#)

By Patrick T. McLaughlin

In a new decision that may have important implications for telemarketers and others using automatic dialing systems, the United States Court of Appeals for the Eleventh Circuit held in the case of *Schweitzer v. Comenity Bank* that the Telephone Consumer Protection Act (TCPA) allows a consumer to partially revoke his or her consent to receive automated telemarketing calls.

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**06.26.2017** [The Second Circuit issues potentially impactful ruling on revocation of consent to be called under the Telephone Consumer Protection Act when that consent is given as bargained-for consideration for a binding contract](#)

By Patrick T. McLaughlin

Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, (TCPA) to protect consumers from “[u]nrestricted telemarketing, which it determined to be “an intrusive invasion of privacy.” The TCPA prohibits, among other conduct, telephone calls to residential phone lines or cell phones using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party.

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**06.08.2017** [When is a seller liable for illegal calls made by a third party telemarketer? Fleshing out vicarious liability under the Telephone Consumer Protection Act](#)

By Patrick T. McLaughlin

Using a telemarketer to market goods or services can be extremely costly to the seller if the telemarketer conducts its business in a manner that violates the Telephone Consumer Protection Act (TCPA). Penalties for violations of the TCPA range from \$500 to \$1,500 per call. And with call or text campaigns that may reach thousands of recipients, or even millions – the potential liability can be astronomical. It should be no surprise TCPA class action lawsuits are flourishing.

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**05.17.2017** [Oklahoma – New Law Requires the Losing Party to Pay Attorney Fees](#)

By Courtney Davis Powell

HB 1470, signed into law last week, does away with the “American Rule,” which impacts which party is responsible for attorney fees at the conclusion of a lawsuit. Set to go into effect in November 2017, the new law requires the court to award attorney fees to the prevailing party – paid for by the non-prevailing party.

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**05.10.2017** [Federal Court in Missouri holds technical failure to comply with the FCC’s TCPA opt-out notice requirements on fax advertisements does not confer standing on recipient who consented to receive the faxes](#)

By Patrick T. McLaughlin

The FCC's TCPA “opt-out” notice requirements for sending *solicited* faxes continues to be weakened.

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**01.12.2017** [Governor Greitens Orders Review of Every Missouri Regulation](#)

By Ryan C. Hardy

On January 10, 2017, Missouri Governor Eric Greitens signed Executive Order 17-03 (the “Order”). Among other things, the Order compels all state agencies to review each and every Missouri regulation appearing in the Code of State Regulations that falls within their jurisdiction.

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**08.09.2016** [A federal district court in Missouri rejects an FDCPA claim based on the legal theory that post-judgment interest in Missouri nontort cases must be specifically awarded in the judgment to be collectable](#)

By Joshua C. Dickinson, Shilee T. Mullin

We are pleased to report a victory in the Eastern District of Missouri in an FDCPA case concerning the collection of statutory post-judgment interest on an unpaid Missouri state court judgment.

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