TCPA Class Action defeated on merits and class certification thanks to McGlinchey team's tenacious lawyering

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Where we started: In 2018, we took over a 2016 case after the court had entered partial summary judgment on a critical point. Our client, a materials testing, inspection, and certification company, was the subject of a class action suit regarding calls to set up end-of-lease vehicle inspections on behalf of a captive auto finance company.

Under the Telephone Consumer Protection Act (TCPA), if a call to a consumer is made to merely complete an existing transaction, the caller does not need written consent – the fact that the consumer provided the phone number in connection with the transaction provides sufficient evidence of consent. But for telemarketing and advertising calls, a caller must have prior written consent to contact that consumer.

Therefore, the case centered around this fundamental question: Were these calls in connection with the original transaction between the finance company and the vehicle lessee, or were they considered new, unsolicited marketing calls? The court initially found that the calls were in fact for dual purpose, resulting in major exposure for our client.

Our strategy – plus more: The client had been very pleased with McGlinchey attorneys in other litigation matters, so when they sought new counsel for this class action, they turned to us. Rather than using what we inherited, we threw out every preconceived notion and started from scratch, thoroughly considering every possibility and pulling every thread. We re-strategized the defense from the ground up to reframe the issue and set our sights on winning on the merits of the case as well as defeating class certification.

To address the case's merits, we elicited new testimony from our client (the testing and certification company), and the auto finance company (their client). This new evidence illustrated that the inspection company is only paid for inspections completed; only performs work for finance/leasing companies (not for individuals); are not involved in valuing the car, nor with any activities related to the sale of the car; and perform inspections for various manufacturer's captive finance companies, such that promoting sales for one manufacturer would represent a business conflict. Given this testimony, we convinced the court that this was not a closed question of dual purpose of existing transaction + sales – resulting in a reversal of the previous ruling.

With the facts deemed neutral, we turned our attention to defeating class certification by casting doubt on the methodology of the class's expert witness. After a tactical examination, we were successful in having the expert excluded under Daubert by casting sufficient doubt on the methods used to identify class members.

Upshot: After five years of litigation and two denied motions on the plaintiff's part to reconsider, class counsel finally declined to appeal. Based on McGlinchey's significant familiarity with the particular legal complexities impacting the financial services industry, from both the litigation and compliance perspectives, and using an intimate, collaborative approach, we were able to turn this case around and deliver a win for our client.