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U.S. Supreme Court's "Autodialer" Ruling Under Telephone Consumer Protection Act Should Shield Debt Collectors from Liability Where Device Does Not Randomly or Sequentially Generate Numbers

By Wayne Streibich, Diana M. Eng, and Andrea M. Roberts*

Debt collectors (as well as financial institutions and other consumer-facing businesses) should take note that the U.S. Supreme Court has ruled that the definition of an "autodialer" under the Telephone Consumer Protection Act, as written, requires that the device must use a random or sequential number generator. This narrow interpretation should shield companies from liability in current or future actions, where the consumers' telephone numbers are known and not random or sequentially generated.

In *Facebook, Inc. v. Duguid*,[1] the U.S. Supreme Court ("SCOTUS") narrowly interpreted the definition of "autodialer" under the Telephone Consumer Protection Act ("TCPA"), holding the definition excludes equipment that does not use a random or sequential number generator. SCOTUS specifically held that an "automatic telephone dialing system" is limited to equipment that either stores a telephone number using a random or sequential number generator, or produces a telephone number using a random or sequential number generator.

SUMMARY OF FACTS AND BACKGROUND

Plaintiff Noah Duguid began receiving several login-notification text messages from defendant Facebook, Inc. ("Facebook"), alerting him that someone had attempted access to the Facebook account associated with his phone number from an unknown browser. Plaintiff never had a Facebook account and

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[1] 592 U.S. ___, 2021 U.S. LEXIS 1742 (Apr. 1, 2021).

had not given Facebook his phone number. As such, plaintiff commenced a putative class action in the U.S. District Court for the Northern District of California against Facebook, alleging it violated the TCPA by maintaining a database that stored phone numbers and programmed its equipment to send automated text messages to the stored phone numbers each time the person's account was accessed by an unrecognized device or browser.

Facebook moved to dismiss, arguing that it did not violate the TCPA because Facebook did not use an automatic dialer, as its text messages were not sent to phone numbers that were randomly or sequentially generated. Rather, Facebook sent targeted, individualized texts to phone numbers linked to specific accounts. The district court agreed with Facebook and dismissed plaintiff's complaint with prejudice.

Plaintiff appealed, and the U.S. Court of Appeals for the Ninth Circuit reversed the district court's order. The Ninth Circuit held that an autodialer "need not be able to use a random or sequential generator to store numbers; it need only have the capacity to 'store numbers to be called' and 'to dial such numbers automatically.' " SCOTUS granted certiorari to resolve a circuit split among the courts of appeals regarding whether the definition of an "automatic telephone dialing system" includes equipment that can "store" and dial phone numbers, even if such equipment does not "us[e] a random or sequential number generator."

Section 227(a)(1) of the TCPA defines an autodialer as: "equipment which has the capacity—(a) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers."

SCOTUS' DECISION

In reaching its decision, SCOTUS first looked at the text of the TCPA and the conventional rules of grammar to interpret the statute. Using the "series-qualifier canon," SCOTUS determined that the comma in Section 227(a)(1)(A) suggests Congress intended the phrase, "using a random or sequential number generator," to apply equally to both preceding elements (store and produce). SCOTUS expressly rejected plaintiff's argument that it should "stretch the modifier back to include 'produce,' but not so far back as to include 'store' " because there was "no grammatical basis" to support plaintiff's position. As such, SCOTUS held that the definition of autodialer requires that in all cases, whether storing or producing numbers to be called, the equipment must use a random or sequential number generator.

Next, SCOTUS reviewed the statutory context of the TCPA and determined that expanding the definition of autodialer "to encompass any equipment that

merely stores and dials telephone numbers would take a chainsaw to these nuanced problems when Congress meant to use a scalpel." SCOTUS noted that applying plaintiff's interpretation of the statute would "capture virtually all modern cell phones, which have the capacity to 'store . . . telephone numbers to be called' and 'dial such numbers' " and, therefore, "could affect ordinary cell phone owners in the course of commonplace usage, such as speed dialing or sending automated text message responses."[2] Accordingly, SCOTUS reversed the Ninth Circuit's decision and held that "[t]o qualify as an 'automatic telephone dialing system,' a device *must* have the capacity either to store a telephone number using a random or sequential number generator or to produce a telephone number using a random or sequential number generator."

CONCLUSION

SCOTUS' decision is a significant win for debt collectors, financial institutions, and other consumer-facing businesses, as it should shield them from pending and future TCPA actions involving text message and telephonic communications to consumers, where the consumers' telephone numbers are known and not random or sequentially generated. This narrow construction of the "autodialer" definition deals a huge blow to the plaintiffs' bar and should reduce TCPA litigation.

However, Senator Ed Markey, who helped write the TCPA when he was a member of the House of Representatives, has already vowed to introduce legislation to amend the TCPA to "fix the Court's error."[3] Thus, this victory may be short lived.

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[2] SCOTUS similarly rejected plaintiff's argument that his interpretation of the statutory language makes the most "sense" because it was "contrary to the ordinary reading of the text" and would "produce an outcome that makes even less sense." Further, SCOTUS rejected plaintiff's legislative purpose argument, holding "[t]hat Congress was broadly concerned about intrusive telemarketing practices, however, does not mean it adopted a broad autodialer definition."

[3] *See* Senator Markey and Rep. Eshoo Blast Supreme Court Decision on Robocalls As "Disastrous," *available at* https://www.markey.senate.gov/news/press-releases/senator-markey-and-rep-eshoo-blast-supreme-court-decision-on-robocalls-as-disastrous.