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ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

Sixth Circuit Clarifies TCPA's Prior Express Consent

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The Sixth Circuit has clarified what constitutes "prior express consent" in connection with debt collection. In *Hill v. Homeward Residential, Inc.*, File No. 15a0201p.06, 2015 U.S. App. LEXIS 14703 (6th Cir. Aug. 21, 2015) the consumer sued its mortgage company under the TCPA for calls made to his cell phone. The question presented to the court was whether Hill provided Homeward Residential with prior express consent. The debt at issue was originated by another mortgage company and in connection with obtaining the mortgage, Hill provided a home number and a work number. Ultimately, the home line was cancelled and the mortgage was transferred to Homeward Residential. Over the course of his dealings with Homeward Residential, Hill provided his cell number on a number of occasions, including: (1) by notifying Homeward Residential that his primary phone number had changed and providing his cell number; (2) by listing his cell number on the loan modification documents; and (3) by listing his cell number on a number of loss mitigation documents.

The court determined that Hill provided prior express consent. The court additionally endorsed the FCC's clarification of prior express consent in the debt context and the trial court's jury instruction on the same which read as follows:

"Prior express consent' means that before Defendant made a call to Plaintiff's cellular telephone number, Plaintiff had given an invitation or permission receive calls to that number.

Autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the 'prior express consent' of the called party."

In doing so, the court noted consent does not have to be given at the outset of the transaction, but can be provided during the transaction. Therefore, any "autodialed and prerecorded message calls to wireless numbers *provided by the called party in connection with an existing debt* are made with the 'prior express consent' of the called party." *Slip Op.* at 7 (internal citations omitted). Importantly, the court also held that the debtor does not have to give his consent to automated calls specifically and general

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

consent to being called on the cell phone will suffice.

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