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District Court Rules Telemarketer's Single Unanswered Call Creates Article III Standing

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A single missed call from a telemarketer constitutes a concrete injury that gives rise to standing, a federal district court in California has ruled. In *Shuckett v. DialAmerica Marketing, Inc.*, 2019 U.S. Dist. LEXIS 29598 (S.D. Cal. Feb. 22, 2019), the defendant DialAmerica was hired by another company, American Standard, to conduct telemarketing calls. Ms. Shuckett, the plaintiff, alleged in her complaint that she had received a series of telemarketing phone calls on behalf of American Standard, each of which violated the Telephone Consumer Protection Act ("TCPA"). Both DialAmerica's and Shuckett's phone records indicate that DialAmerica only made one phone call to Shuckett (the other telemarketing calls Shuckett received emanated from another company) and that the single call contained 0 minutes of "talk time," meaning that Shuckett did not answer it.

While DialAmerica conceded that a single call can give rise to a concrete injury, it contended that because the call went unanswered, Shuckett could not have been harmed and therefore did not have standing to pursue a TCPA claim. For her part, Shuckett alleged that the call caused her nuisance and invaded her privacy, thereby injuring her.

The district court sided with Shuckett and found that she had standing to pursue her TCPA claim against DialAmerica. Under the landmark Supreme Court case *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 194 L. Ed. 2d 635 (2016), a federal statute is insufficient by itself to confer standing. Instead, a plaintiff must show that he or she suffered an actual, concrete injury that is traceable to the conduct of the defendant. The district court noted that other courts have held that a text message gave rise to standing under the TCPA, and found no meaningful difference between a text message and an unanswered phone call. Both, according to the district court, "invade the privacy and disturb the solicitude" of the recipient and thereby create an injury.

Interestingly, the court left open the possibility that "[h]ad the call gone entirely unnoticed, perhaps this would be a different case" because the plaintiff would not have sustained an injury. That was not the case here, though: "While it appears undisputed that Shuckett did not pick up the call, there is no evidence that she was entirely unaware

of it.” Therefore, the court ruled that Shuckett had standing to pursue her TCPA claim against DialAmerica.

Takeaways from *Shuckett*

Shuckett reminds us that even a single phone call can lead to liability under the TCPA, and informs us that a plaintiff may have standing even if he or she did not pick up the call. However, this case does leave a small amount of hope for telemarketers; if the plaintiff admits to not noticing the phone call, then he or she may not have standing to pursue TCPA claims.

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