July 26, 2023

The 11th Circuit Finds a Single Text Message Sufficient Injury for Article III Standing

On July 25, the U.S. Court of Appeals for the Eleventh Circuit issued an en banc decision in *Drazen v. Pinto*, No. 21-10199, 2023 WL 4699939 (11th Cir. July 25, 2023), finding that a "plaintiff who receives an unwanted, illegal text message suffers a concrete injury" for purposes of Article III standing in Telephone Consumer Protection Act (TCPA) litigation.

In doing so, the Eleventh Circuit disagreed with an earlier panel decision in *Salcedo v. Hanna*, 936 F.3d 1162 (11th Cir. 2019), which found that a single unwanted text message is a "brief, inconsequential annoyance [that is] categorically distinct from those kinds of real but intangible harms" and therefore insufficient to meet Article III's injury-in-fact requirement.

The *Drazen* decision should be seen as the controlling law in the Eleventh Circuit. As such, it significantly increases potential exposure for companies engaging in telephone solicitation in Florida under the TCPA and may likewise increase exposure under the TCPA's state counterpart, the Florida Telephone Solicitation Act.

Companies engaged in telephone solicitation should continue to ensure that their telemarketing activities strictly comply with both statutes, as even a single phone call or text has now been deemed a sufficient injury for a plaintiff to have standing under the TCPA and could expose the company to consumer class actions.

Authors



Mark A. Romance
Partner

Miami, FL | (305) 373-4048

mromance@daypitney.com



Andrew R. Ingalls
Partner

Miami, FL | (305) 373-4032

aingalls@daypitney.com



Richard H. Brown
Partner

Parsippany, NJ | (973) 966-8119

New York, NY | (212) 297-5854

rbrown@daypitney.com



Christina A. Livorsi
Partner

Parsippany, NJ | (973) 966-8229

clivorsi@daypitney.com