

Supreme Court Settles Jurisdiction Question Under Telephone Consumer Protection Act

by Andrew D. Bluth, Lauren Lynch Flick and John S. Poulos

Court's decision that federal courts possess subject matter jurisdiction introduces new strategy considerations in the prosecution and defense of such actions.

The U.S. Supreme Court has unanimously held that actions brought by private citizens under the Telephone Consumer Protection Act (TCPA) can be heard in either state or federal court, despite language in the statute which most appellate courts had previously interpreted as limiting such claims to state courts. In *Mims v. Arrow Financial Services LLC*, the Supreme Court resolved the circuit split, ruling that the language of the statute regarding state court jurisdiction is permissive, not mandatory, and insufficient to divest federal courts of jurisdiction over this federal law.

The TCPA (47 U.S.C. § 227 *et seq*) was enacted by Congress in 1991 in an attempt to curb the intrusive nature of certain previously unrestricted telemarketing calls. Among the provisions in the statute is a private right of action as follows:

"A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions."

Based on this language, various federal appellate courts, including the Second, Third, Fourth, Fifth, and Ninth Circuits, and the Eleventh Circuit in the *Mims* case below, had concluded that Congress intended state courts to have exclusive jurisdiction over TCPA claims. The Supreme Court disagreed. The Court was not persuaded that Congress had intended to eliminate federal subject matter jurisdiction when it wrote the above provisions of the statute. Rather, it found the permissive language to be a general

granting of jurisdiction to one court (in this case state courts), which does not, of itself, imply that the jurisdiction is to be exclusive.

Many TCPA lawsuits today are styled as class actions, and allege damages in excess of \$5 million in an attempt to take advantage of a federal court's diversity jurisdiction under the Class Action Fairness Act. CAFA requires that there be an amount in controversy of at least \$5 million. The *Mims* ruling does not directly affect these "traditional" TCPA class action lawsuits. It does, however, allow plaintiffs who are unable to satisfy the CAFA requirements to file their lawsuits directly in federal court. Similarly, it will allow defendants to remove class actions started in state court to federal court. These options raise important strategic considerations that parties must take into account when involved in such a lawsuit, and could have the impact of increasing the number of smaller cases filed under the TCPA in which amounts in controversy of less than \$5 million are alleged.

For questions about the TCPA or the *Mims* case, please contact one of the attorneys listed below.

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