

## TCPA Litigation Update — Good News for Defendants Facing Claims Under Florida’s Mini-TCPA

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Since the beginning of 2022, dozens of Florida Telephone Solicitation Act (“FTSA”) claims have been filed. The FTSA and related case law have been bad news for defendants. The FTSA is significantly more restrictive than the TCPA because it contains an overly broad definition of “autodialer” that looks at any system that either automatically dials or *selects* phone numbers to be dialed; unlike the TCPA, no random or sequential number generator needs to be used. On its face, the FTSA sweeps up click-to-dial systems as well as most workflow programs into its gambit — although that has not yet been tested on a motion for summary judgment. In addition, at least one state court has found FTSA claims to be actionable regardless of whether the plaintiff has suffered any actual harm.

On September 13, 2022, the scale began to shift slightly in favor of defendants. In *Davis v. Coast Dental*, 2022 WL 4217141 (M.D. Fl. Sept. 13, 2022), a federal district court in Florida held that receipt of an unsolicited marketing call is NOT enough, standing alone, to state an FTSA claim. In *Davis*, the plaintiff alleged, “[t]o transmit the above telephonic sales calls, Defendant utilized a computer software system that automatically selected and dialed Plaintiff’s and the Class members’ telephone numbers.” The court found this allegation was insufficient to state a claim because it was a conclusory allegation that merely parroted the statute. The court noted that the plaintiff could have alleged a number of other facts related to the transmission of the calls but failed to do so. In addition, the court concluded that alleging mere receipt of an unsolicited call was not sufficient to state a claim.

Although *Davis* is just one case, it is a critical *first* ruling supporting the defense that conclusory allegations are not enough to state an FTSA claim. Not only can defendants rely on *Davis* to challenge plaintiffs’ allegations in a motion to dismiss, but they may also use the case as leverage to avoid motion practice and reach early resolution of frivolous claims.

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