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BAD NEWS MONDAY: Corporate Defendant Must Produce Enormous Amount of Financial Information After Losing Its Motion for Protective Order for 30(b)(6) Notice Deposition.

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Imagine you're a corporate TCPA defendant who is required to produce a MASSIVE amount of information concerning your corporation's financial affairs to the other side, very early in the case — none of which is likely proportional to the needs of the case.

Well, in *Powell v. H&R Accounts*, Inc No. 7:22-cv-1052-TMC, 2022 WL 16859774 (D.S.C. Nov. 10, 2022), the court found that defendant failed to carry its burden of establishing that a protective order was appropriate here — leaving the corporate Defendant — H&R — to provide testimony related to the following topics:

- Defendant's sharing of resources, facilities, or employees with Meduit, or the extent to which Defendant and Meduit have, or have had, common resources, facilities, or employees.
- The contracts or agreements between Defendant and Meduit concerning Defendant's calling practices, including any amendments or addendums.
- Each transfer or exchange of cash from Defendant to Meduit—or a bank account associated with Meduit.
- Each transfer or exchange of cash from Meduit to Defendant—or a bank account associated with Defendant.
- The total amount of cash transferred from Meduit to Defendant—or a bank account associated with Defendant.
- The total amount of cash transferred from Defendant to Meduit—or a bank account associated with Meduit.
- Whether the cash transfers identified in Topic Nos. 52 and 53 were (1) transferred for payment of shared expenses; (2) transferred for payment of debt; or (3) the transfer of retained earnings or profit sharing.

YIKES!

Backing up to how defendant got here: Plaintiff Powell brought a TCPA class action against defendant H&R Accounts, Inc. and later amended her complaint bring in Meduit Group, LLC, alleging Meduit is the parent company of H&R. Powell asserts that Meduit was vicariously liable for the calls at issue made by H&R. (Interesting choice on H&R's part to not oppose the motion to amend the complaint).

Powell served a Rule30(b)(6) deposition notice on H&R including 54 topics – and the 11 topics above which relate to Meduit. The FRCP 30(b)(6) rules permits a party to notice the deposition of a corporation but the notice must describe with reasonable particularity the matters for examination. The corporation "must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify." Fed. R. Civ. P. 30(b)(6). Additionally, Rule 30(b)(6) states the corporation designee "must testify about information known or reasonably available to the organization." The intention and nature of this rule is to designate a corporate witness that will take reasonable steps to acquire the information of the corporation and testify to it.

H&R first objected to its 30(b)(6) designee having to testify about information held by Meduit and cited to authority suggesting "discovery requests to a subsidiary about its parent [company] are improper because the subsidiary does not control the parent." The Powell Court quickly rejected this argument and noted that the authority relied upon by H&R involved a situation where the subsidiary did not have control over the information sought – instead its parent company did. H&R failed to state it did not have access or control over the information sought and noted the H&R designee only needs to testify regarding "information known or reasonably available to the organization,"

Next, H&R argued the Meduit deposition topics were not proportional to Powell's litigation needs. H&R argued that because it intends to file a motion to dismiss the amended complaint as to Meduit for failure to state a claim, the notice to Mediuit is not proportional to what is at dispute. The court made short work of this argument as premature and speculative. (Again, why didn't H&R oppose the motion before the court granted Powell leave to amend?).

Lastly, H&R argued the following Meduit deposition topics were "not even minimally relevant" and did not relate to establishing Meduit's control over H&R for purposes of vicariously liability:

In response, Powell argued that vicarious liability under the TCPA is governed by federal common law of agency and these topics seek information in H&R's control relating to the relationship between H&R and Meduit, concerning H&R's calling practices.

In agreeing with Powell, the court held the topics in question sought relevant information that is *reasonably calculated* to lead to the discovery of admissible evidence.

Consequently, H&R is forced having to produce information to the above massively overbroad request regarding its financial affairs with Meduit.

As every TCPA class defense lawyer know, one of the most common tactics of the Plaintiff's bar is to serve overly broad boilerplate demands to pressure defendants into settling. That is why it is SO critical to take discovery demands seriously and draft proper non-boilerplate objections that specifically addresses the call of each and every topic.

The Powell case is another reminder that strategic motion practice and asserting well-framed objections is A MUST to defeating TCPA class actions and a poor defense strategy can derail the course of litigation.

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