

LITIGATION AFTER DEATH: Does TCPA Claim Survive Death of Plaintiff? District Court in Florida Holds “Yes.”

Article By:

Eric J. Troutman

Does a TCPA claim die along with a call recipient?

For a while there this was an issue I was seeing with some frequency and the courts were struggling with it quite a bit.

Under the federal common law whether a claim survives turns on whether the statute is penal or remedial in nature (which is weird if you think about it.)

Some early courts looking at the issue determined the TCPA was penal in nature. And this makes sense since the \$500.00 per call minimum statutory damage is VASTLY detached from any actual harm to be occasioned by a phone call. So early cases refused to permit TCPA claims to survive the death of a claimant.

But more recent cases have swung the other way, as the decision in *Settle v. PHBC Marketing* 2024 WL 3638007 (M.D. Fl. Aug. 1, 2023) demonstrates.

In *Settle* Plaintiff alleged PHBC used an automatic telephone dialing system to call Bruce Settle two times on May 11, 2023, and May 12, 2023, without his consent. And that lead to a lawsuit.

Bruce apparently died and someone named Laurie stepped in to sue in his stead prompting PHBC to move to dismiss because dead people can't sue, and neither should their widows. (They probably said it nicer than that.)

The Court walked through the case law and decided the TCPA was remedial in nature and let the claim survive. Its findings are questionable, however:

The Court agrees with the weight of authority finds that the TCPA is primarily remedial in nature, as (1) the statute redresses harm to individuals more than harm to the general public, (2) recovery under the statute runs to individuals, and (3) the remedies are not disproportionate to the harms. As a result, Plaintiff's TCPA claim did not extinguish upon Mr. Settle's death

While I agree with 1 and 2, finding 3 is plainly wrong. The remedies are vastly disproportionate to the

harm in most instances— a phone call simply does not cause \$500.00 in damage, even with our hyper-deflated currency these days.

The Court also refused to deem Laurie an inadequate class member at the pleadings stage reasoning it was too early in the case to make that decision.

So another interesting result here. Again I highly doubt the TCPA is remedial in nature but that seems to be conclusion courts have come to lately—and that means death doesn't stop a TCPA claim. Keep it in mind.

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