

## **DON'T LIKE WHERE THIS IS GOING: Court Certifies Critical E-Sign Issue to Appellate Court– Is this Good News or Bad News?**

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There's that old line from *Gladiator* (the good one, not the new one): "People should know when they're conquered."

In TCPAWorld not knowing when you've lost can sometimes cost *everyone*—as we're about to see.

A while back a [court held](#) oral TCPA consent is not valid as prior express written consent.

Yep, no surprise there. Been saying that for literally years.

But rather than lay down and accept that ruling the Defendant in the case has sought to take an interlocutory appeal from the issue.

Fine, whatever, that's their business. Waste your dollars.

Except they've gone and made it all of our business by framing the issue for appeal completely wrong.

Rather than simply appeal the issue of whether consent under 47 CFR 64.1200(f)(9) must be in writing—it must—the defendant is appealing this weird, vague, and extremely dangerous issue:

" [W]hether the E-SIGN Act's disclosure requirements apply to the TCPA."

Whaaa?

Why in the world would the issue get framed in such a broad and terrifying way?

This opens up the possibility the appellate court requires an overly broad and insane application of E-SIGN—that the FCC never intended—requiring a full e-sign consent before an online webform can be submitted. Totally unnecessary.

If such a ruling comes down it would have retroactive impact and disseminate lead buyers who have

bought forms that do not comply with this non-existent requirement.

In other words the defendant just put EVERYONE at massive risk in a case just because they lost an issue they were obviously going to lose but then appealed something that was far far too broad. My goodness.

Now there is hope here.

Hopefully in their appellate briefs they LIMIT THE ISSUE FOR REVIEW to whether or not the express written consent must be in writing. But given what I have seen here, I doubt it. (Maybe this blog will help.)

If you know anyone over there maybe whisper in their ear: "Don't risk ruining our businesses to save yours. Thanks!"

Regardless, we have another high-stakes appeal to track here in TCPAWorld. We will keep an eye on it!

The ruling certifying the issue for interlocutory appeal is in *Bradley v. DentalPlans.com*, 2024 WL 5158791 (D. MD Dec 18, 2024.)

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