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\$1.5M
POTENTIAL
CLAIM

1 TRIAL COURT DISMISSAL

1 FAVORABLE SETTLEMENT

CASE STUDY

A CREATIVE DEFENSE to an Improper Application of the TCPA

Our Client's Challenge

Our client, General Electric (GE), faced a lawsuit under the federal Telecommunications Consumer Protection Act (TCPA) with the potential for significant monetary liability. The TCPA is meant to protect consumers from fraudulent or abusive telemarketing practices.

In this case involving our client, however, that was not what happened. A consumer bought a cell phone with a number that, she alleged in her lawsuit, previously belonged to a GE employee or contractor. The phone received automated alerts via text message allegedly from GE. The consumer claimed she had received nearly 3,000 texts over 18 months before they stopped.

The plaintiff, representing herself, sued GE for violating the TCPA. The federal law imposes a fine of \$500 for every phone call or text message found to be in violation. Since the plaintiff claimed she had received nearly 3,000 texts, that meant GE faced a potential claim of almost \$1.5 million, with the potential for additional penalties. With that much at stake, GE chose Lightfoot to defend it against the lawsuit.

Our Approach

We knew from the start that the TCPA was never meant to be used for this type of lawsuit. It's supposed to curb the indiscriminate use of so-called "autodialers" to place phone calls to randomly or sequentially generated numbers. That wasn't the case here because, as the plaintiff alleged, her phone number had allegedly been targeted. The problem, however, was that at the time there was conflicting precedent regarding what an autodialer is. So, the Lightfoot team got creative to position its client GE in the best possible way.

A **CREATIVE DEFENSE** to an Improper Application of the TCPA

First, we petitioned to have the case moved to another jurisdiction, which is always a good initial step in changing the potential trajectory of a lawsuit. The plaintiff filed in an Alabama federal court because she lived in Tuscaloosa at the time, but we discovered by piecing together multiple documents she had filed in other lawsuits that she lived in North Carolina during the 18 months she claimed to have received the text messages. So, we had grounds to have it moved to that state, and the Alabama federal court agreed. The case was dismissed in Alabama and sent to North Carolina.

Transfer secured, we focused on the lawsuit in North Carolina. At the time, there had not been a precedent-setting case involving autodialers in the federal Fourth Circuit, which covers North Carolina. Outside of the Fourth Circuit, courts were split regarding whether allegations like those asserted by this plaintiff were sufficient to establish TCPA liability. In a motion to dismiss, we argued that the case was without merit because the alleged texts were not sent by an autodialer. Thus, even if the plaintiff had received the thousands of texts that she claimed, there was no liability under the TCPA.

The trial court agreed with our motion and **dismissed the case against GE**, with prejudice. The plaintiff subsequently appealed to the Fourth Circuit after engaging appellate counsel. We prepared to make the same argument on appeal.

The Result

As we were briefing for the appeal, we reached a very favorable settlement with the plaintiff on behalf of GE.

The autodialer issue has split the federal circuit courts, and the matter is currently before the U.S. Supreme Court. As one of the first cases in the Fourth Circuit to deal with this issue, we contributed to precedent that will likely play a role in any ultimate resolution.

Of most importance to the Lightfoot team, however, is that our creativity and approach resulted in a good outcome for our client.

About Lightfoot, Franklin & White LLC

Trusted by clients and respected by opponents, Lightfoot is a leading national litigation firm. True to its **“Trial Tough, Solution Savvy”** philosophy, Lightfoot was named a **“Top 20 Trial Law Firm”** in the U.S. by Benchmark Litigation in 2019, 2020 and 2021. Working from offices in Birmingham and Houston, the firm’s 60+ lawyers are known for their work involving complex, bet-the-company litigation; internal and government investigations; risk management; and compliance counsel, including NCAA matters, for clients across the country and around the world. For more information, visit lightfootlaw.com and connect with us on [Facebook](#), [LinkedIn](#) and [Twitter](#).



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