

SCHWARTZ & BALLEN LLP

1990 M STREET, N.W. • SUITE 500

WASHINGTON, DC 20036-3465

WWW.SCHWARTZANDBALLEN.COM

TELEPHONE
(202) 776-0700

FACSIMILE
(202) 776-0720

MEMORANDUM

July 21, 2017

To Our Clients and Friends

Re: Court Decision on Telephone Consumer Protection Act

The U.S. Court of Appeals for the Third Circuit has vacated a U.S. district court decision that had dismissed a consumer's claim for a violation of the Telephone Consumer Protection Act (TCPA). The unanimous panel held that a single unsolicited prerecorded voicemail violated the TCPA and was sufficient to establish a "concrete injury" under the Supreme Court's recent *Spokeo, Inc. v. Robins* decision.

The court stated that when a party sues under a statute alleging "the very injury [the statute] is intended to prevent," and the injury "has a close relationship to a harm . . . traditionally . . . providing a basis for a lawsuit in English or American courts," a concrete injury has been pleaded. The court said that Congress clearly identified unsolicited prerecorded calls as an injury and that the injury alleged protects the same interests implicated in common law causes of action for invasion of privacy. The court observed that for purposes of determining a party's standing, all intangible injuries (such as unsolicited telephone calls that violate the TCPA) that meet this standard *are* concrete.

The case, *Susinno v. Work Out World Inc.*, was remanded for further proceedings.

A copy of the court's decision can be found on our website at www.schwartzandballen.com/news.html

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Magda Gathani at (202) 776-0700.