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Quest Diagnostics Can't Use High Court To Evade TCPA Case

By **Ben Kochman**

Law360 (September 3, 2019, 8:41 PM EDT) -- Quest Diagnostics can't use a June U.S. Supreme Court ruling to escape a Telephone Consumer Protection Act proposed class action suit brought against it by an Oregon woman who alleged the company made illegal, unsolicited debt-collection phone calls, a New Jersey federal court found Tuesday.

The lab-testing company had attempted to convince U.S. District Judge William J. Martini to reconsider his **December decision** in favor of Judy Wilson in light of the **high court's ruling** in **PDR Network LLC et al. v. Carlton & Harris Chiropractic Inc.** That ruling struck down a Fourth Circuit finding that a West Virginia federal court was required to accept wholesale the Federal Communications Commission's view that an ad offering free services is an "unsolicited advertisement" prohibited by the TCPA.

The justices found that that dispute should be sent back to the Fourth Circuit and declined to address the core question of whether district courts are required under the Hobbs Act to defer to agency decisions, because that question hinged on the resolution of "two preliminary sets of questions that were not aired before the Court of Appeals."

But the Supreme Court case does not change any of the "controlling law" dealing with the TCPA issue in the lawsuit against Quest, Judge Martini found on Tuesday.

"Because defendant's arguments are not based on any actual change in controlling law, its motion for reconsideration is denied," Judge Martini wrote.

Quest has made several attempts to escape or pause the suit since Judge Martini concluded in December that Wilson had sufficiently alleged at this stage in the litigation that the company had contacted her cellphone using a predictive dialer, a device that the judge found has been "considered an [automatic telephone dialing system] under binding precedent."

The company also attempted to **pause the suit** while the FCC weighs in on what qualifies as an autodialer. Quest argued that the FCC's new guidance could alter the definition of an autodialer under the TCPA and that engaging in discovery regarding the nature of the dialing system used by diagnostic testing providers would be a waste of judicial resources.

But that attempt was also denied by the New Jersey court in August, records show.

Representatives for Quest declined to comment Tuesday. Representatives for the proposed class did not immediately respond to a request for comment.

Wilson is represented by Andrew Obergfell of Bursor & Fisher PA.

Quest is represented by David S. Almeida and Mark S. Eisen of Benesch Friedlander Coplan & Aronoff LLP and Michael T. Hensley of Bressler Amery & Ross PC.

The case is Wilson v. Quest Diagnostics Inc. et al., case number 2:18-cv-11960, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Allison Grande and Sophia Morris. Editing by Jack Karp.

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