

District Court Denies Class Certification and Grants Partial Summary Judgment in Favor of DISH Network L.L.C. in Telemarketing Suit

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Benesch achieved a significant victory for DISH Network L.L.C. when the Federal District Court in Denver, Colorado issued an order and an opinion denying the Plaintiff's Motion for Class Certification in its entirety. Plaintiff Matthew Donaca had moved the Court to certify a nationwide class of claimants to seek to collect statutory damages from DISH under the Telephone Consumer Protection Act, alleging that third parties made unwanted telemarketing calls on DISH's behalf.

The Court denied class certification on six grounds, including a lack of ascertainability of class members: "Because members in a class of individuals who received calls on the dates from the dealers who called Mr. Donaca cannot be ascertained, then a class comprising such individuals cannot be certified," the order said. In the same order, the Court granted partial summary judgment to DISH, finding that certain phone calls were not sufficiently linked to DISH in order to hold DISH liable for the call, and reserving judgment upon four calls for trial.

The litigation, prior to the evidentiary hearing and class certification hearing, involved the taking of at least 25 depositions, in at least 10 states, over a one-year time span. It also involved multiple rounds of briefing on class certification and summary judgment issues.

"Plaintiff's class formulation represented an unprecedented attempt to certify a TCPA class action for the alleged telemarketing calls of several unrelated and unaffiliated entities. It was a long, difficult road, but through a concerted, extraordinary team effort, we were able to offer substantial evidence and argue successfully to the Court that the proposed class should not be certified," said Benesch partner, Eric L. Zalud.

The Benesch team included partner Eric L. Zalud, litigation associate David M. Krueger, and litigation paralegal Gregrie Willson.

About Benesch

With offices in Cleveland, Columbus, Indianapolis, Philadelphia, Shanghai, White Plains, and Wilmington, Benesch's core practice areas include Corporate & Securities, Health Care, Innovations, Information Technology & Intellectual Property, Labor & Employment, Litigation, and Real Estate & Environmental. Some of the industries the firm concentrates in include Private Equity, Banking, Health Care, Polymers, Transportation & Logistics, Energy & Natural Resources, Shale Oil & Gas, Construction, Not-for-Profit, and School Law. For more information, visit www.beneschlaw.com.

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