

Supreme Court Strikes Down Part of TCPA

*In one of the most important rulings to date interpreting the Telephone Consumer Protection Act ("TCPA"), the U.S. Supreme Court issued its unanimous decision in *Facebook, Inc. v. Duguid* today. The justices overturned the Ninth Circuit's broad interpretation of the definition of an automatic telephone dialing system ("ATDS"), and held that to qualify as an ATDS "a device must have the capacity either to store a telephone number using a random or sequential generator or to produce a telephone number using a random or sequential number generator."*

The TCPA prohibits automatic telephone dialing systems which it defines as "equipment which has the capacity - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." Circuit splits on the exact legal definition of an ATDS have led to massive forum shopping by class counsel and inconsistent results. The Ninth Circuit had held that the TCPA forbids all devices with the capacity to store and automatically dial telephone numbers. But Facebook, adopting the arguments of the Seventh and Eleventh Circuits, pressed for a narrow interpretation prohibiting the use of only those devices that send messages or make calls to randomly or sequentially generated numbers.

This decision is anticipated to provide much needed clarity to the lower courts involving the definition of an ATDS and to decrease the bulk of consumer-driven litigation that has flooded the courts over the last decade.

KD's Consumer Financial Services Practice Group can assist you with any questions regarding TCPA lawsuits.