Supreme Court Resolves Circuit Split By Allowing Suits Against Telemarketing Violations Into Federal Court Under "Federal Question" Jurisdiction

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The U.S. Supreme Court has issued a decision in *Mims v. Arrow Financial Services, LLC*, resolving a split among federal appeals courts, by holding that claims under the Telephone Protection Act (TCPA), which provides consumers private rights of action for telemarketing violations, can be brought under "federal question" jurisdiction in federal courts rather than only in state courts.

The TCPA is the statute administered by the Federal Communications Commission (FCC) that regulates telemarketing and other commercial calling practices. It prohibits automated and/or prerecorded calls to cell phones in the absence of prior express consent by the called party, and significantly restricts such calls to residential lines. It is also a basis for various do-not-call rules, including the administration of and requirement to honor National Do Not Call Registry listings, as well as the obligation for companies that telemarket to maintain an internal do-not-call list. (The TCPA also regulates "junk fax" advertisements.)

The TCPA gives the FCC rulemaking authority to regulate in these areas, as well as the ability to impose fines for violations. At the same time, it provides a private right of action for violations of its do-not-call provisions, autodialed/prerecorded-call restrictions, and/or of other technical prohibitions and obligations. The statue provides that such claims may be brought in the courts of the various states and the complainant can seek actual damages or $500 in statutory damages, which may be trebled for any willful violation(s).

But courts have split on whether such claims may be brought in the federal courts. Generally speaking, the courts have agreed that TCPA claims may proceed in federal court under their "diversity" jurisdiction, i.e., the parties are from different states and the complaint seeks $75,000 or more in damages, as well as, after its adoption, under the federal Class Action Fairness Act where plaintiffs seek to proceed as a class (and certain other procedural requirements are met). However, if neither of these apply, the only other basis for federal court jurisdiction relevant to the TCPA would be "federal question" jurisdiction where at least one of the issues to be litigated involves rights, obligations or restrictions arising under federal law.

Initially, though there was some divergence very early on, most federal courts came to agree that the TCPA's express provision for claims in state court precluded federal question jurisdiction. This became the rule in the federal courts in the Second, Third, Fourth, Fifth, Ninth, and Eleventh Circuits. More recently, however, the U.S. Court of Appeals for the Seventh Circuit held that the TCPA does provide federal question jurisdiction. And, the Sixth Circuit had joined the Seventh Circuit in also holding federal question jurisdiction exists.

The Arrow Financial case before the Supreme Court came through the Eleventh Circuit, where both that Circuit Court and the district court below it held that Mimms could not proceed under federal question jurisdiction in the federal courts. In reversing the Eleventh Circuit, the Supreme Court held that Congress' specification in the TCPA that private parties may seek redress for violations of the Act (or FCC rules thereunder) "in an appropriate court of [a] State," "if [such an action is] otherwise permitted by the laws or rules of court of [that] State," is a "permissive grant of jurisdiction to state courts" that does not erect "any barrier to the U.S. district courts' exercise of the general federal-question jurisdiction they have possessed since 1875."

Construing the general federal law that creates federal-question jurisdiction, which states that "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States," the Court held that insofar the TCPA creates the right of action and provides the rules of decision, Mimms' claim plainly "aris[es] under" the "laws ... of the United States." It also observed that there is a "deeply rooted presumption" in favor of concurrent federal and state court jurisdiction. That presumption is rebuttable only if "Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim," which occurs only under an explicit statutory directive, an unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests, none of which are present with respect to the TCPA, the Court held.

The case is important as it opens the doors of the federal courts for federal-question TCPA claims in the six Circuits where they previously were barred. Now, even if the parties do not come from different states and have at least $75,000 at issue (the basis for diversity jurisdiction) or did not seek to proceed as a class, litigants may proceed in federal court.