



July 8, 2020

## Welcome!

Welcome to the new format of *All Consuming*. We listened to the feedback. A newsletter filled with long articles gives the detailed information some are looking for but becomes another thing that others have to fit into their already busy day. A newsletter of short articles quickly gives some the information they need to keep on top of issues but may not immediately give others the depth of information they want. So, we thought, why not give the best of both worlds? Each issue of *All Consuming* now will have a featured article that provides a more in-depth analysis of an issue or recent event. That article is accompanied by several shorter articles for those who like the quick-hit format.

As before, the e-newsletter highlights one of the attorneys in the group to help you get to know your Spilman Consumer Finance Practice Group better.

Thank you for reading.

[Spilman Thomas & Battle's Consumer Finance Practice Group](#)

---

## Sorry, Wrong Number: The Ninth Circuit and TCPA Liability

By [Wesley A. Shumway](#)

*The Ninth Circuit holds that callers are subject to TCPA liability if the callers intend to make automated calls to a consenting customer, but instead call someone else.*

On June 3, 2020, the United States Court of Appeals for the Ninth Circuit dealt a blow to callers governed under the Telephone Consumer Protection Act ("TCPA"). The TCPA exempts callers from liability for automatic telephone dialing system-generated ("ATDS") calls if the calls are made with "prior express consent of the called party." In *N.L. v. Credit One Bank, N.A.*, a three-judge panel from the Ninth Circuit joined the Seventh and Eleventh Circuits in holding that a caller's intent to call a customer who consented to ATDS-generated calls will not exempt the caller from TCPA liability if the caller mistakenly calls another individual who did not consent. This position also has received support from the Third Circuit and D.C. Circuit. Thus, the landscape is becoming increasingly difficult for those using ATDS to place calls to customers.

Click [here](#) to read the entire article.

---

## Supreme Court Nixes Robocall Exception for Federal Loans

*"The Supreme Court struck down an exception for government debt collection in a federal ban on robocalls, though it declined the invitation of a group of political professionals to strike down the ban entirely."*

**Why this is important:** In 2015, the TCPA was amended to include an exception from liability for robocalls made solely to collect a debt owed to or guaranteed by the United States. A political consultant trade organization and others filed suit challenging the exception on the basis that, broadly speaking, it violated the First Amendment and must be invalidated because it favors speech made for the purpose of collecting debts owed or guaranteed by the government over political or other speech. The trial court ultimately did not invalidate the exception. On appeal, the Fourth Circuit vacated that ruling, holding that the exception could not withstand the required strict scrutiny applied to content-based restrictions. The U.S. Supreme Court agreed with the Fourth Circuit and held that the government debt exception could not stand. Importantly, the Court also found that this exception was severable from other provisions of the TCPA, and those other provisions can continue to be enforced. An interesting note can be found in the early parts of the Court's opinion. Justice Kavanaugh writes that "Americans passionately disagree about many things. But they are largely united in their disdain for robocalls." He writes that the U.S. government received about 3,700,000 complaints about robocalls in 2019 alone. --- [Nicholas P. Mooney II](#)

---

## **Industry Reacts to United States Supreme Court's Ruling in *Seila Law LLC v. Consumer Financial Protection Bureau***

*"The CFPB's single-Director configuration is also incompatible with the structure of the Constitution, which—with the sole exception of the Presidency—scrupulously avoids concentrating power in the hands of any single individual," the ruling states."*

**Why this is important:** On June 29, 2020, the Supreme Court issued its decision on Seila Law's challenge to the CFPB's structure of a single director who is removable by the President only for inefficiency, neglect of duty, or malfeasance of office. This article highlights one step the Supreme Court did not take: invalidating all of the CFPB's prior actions. It also discusses the initial reaction to the decision that the fix to the structure of the CFPB may be straightforward, but it is too early to tell how the decision will impact how the CFPB operates. --- [Nicholas P. Mooney II](#)

---

## **CFPB Offers Guidance to Servicers Offering COVID-Related Forbearance Options**

*"The Consumer Financial Protection Bureau issued an Interim Final Rule (IFR) that will make it easier for consumers to transition out of financial hardship caused by the COVID-19 pandemic and easier for mortgage servicers to assist those consumers."*

**Why this is important:** Generally, Reg X requires servicers to collect and assess specific information about a borrower's financial information. The IFR allows more limited application information to be reviewed to determine the loss mitigation options available for a borrower. Further, the IFR alleviates the burden of some Reg X requirements relating to reasonable diligence and acknowledgement notice during the application process, although servicers must still comply with Reg X's requirements after a loss mitigation offer is accepted. --- [Angela L. Beblo](#)

---

## **The North Carolina Servicemembers Civil Relief Act**

*"The impact of NCSCRA on lenders and servicers."*

**Why this is important:** With the likely increase in collection actions and foreclosures due to the COVID-19 pandemic, lenders and servicers need to be aware of a recent change in North Carolina related to collecting and foreclosing on delinquent accounts of active-duty National Guard members. On July 25, 2019, North Carolina Governor Roy Cooper signed the North Carolina Servicemembers Civil Relief Act into law. The NCSCRA mirrors the federal Servicemembers Civil Relief Act, and extends the SCRA's protections to active-duty members of the North Carolina National Guard. The NCSCRA defines the term "servicemember" the same as the SCRA and covers active-duty North Carolina National Guard members, or North Carolinians on active duty in another state's National Guard, who are called to active duty for more than 30 consecutive days. The NCSCRA also covers the servicemember's dependents. However, the protections afforded by the NCSCRA are not automatic. To be protected by the NCSCRA, the servicemember, or his or her dependent, must be proactive and notify his or her lender or servicer by providing the lender or servicer with a written or electronic copy of the order to military service no later than 30 days after the termination of the servicemember's active-duty service. Failure to follow through with the notification requirements alleviates any duty on the part of the lender or servicer to comply with the NCSCRA.

Actions for violations of the NCSCRA can be brought by either the North Carolina Attorney General or the individual servicemember. Even though the NCSCRA mirrors the SCRA, it is important that lenders and servicers be aware of the implications associated with violating the NCSCRA because a violation can lead to significant liability. A violation of the SCRA constitutes an automatic violation of the NCSCRA. Moreover, a knowing violation of the NCSCRA constitutes an unfair or deceptive trade practice pursuant to N.C.G.S. § 75-1.1, et al. and incorporates the remedies available in Chapter 75. This is significant because a violation of NCSCRA allows for not only the recovery of attorneys' fees, but more importantly, treble damages. Therefore, lenders and servicers need to ensure that they strictly comply with the SCRA and NCSCRA following proper notification by a servicemember or his or her dependent. --- [Alexander L. Turner](#)

---

## **Consumer Complaints Against Banks, Credit Cards Rise - a Hint at Financial Strain**

*"On March 4, the CFPB received its first complaint mentioning the COVID-19 pandemic -- the first of many to come."*

**Why this is important:** The COVID-19 pandemic has impacted every aspect of our daily lives. The federal government and many state governments have issued measures to attempt to lessen its impact on consumers' and business' finances. Some of the more significant of these is a temporary moratorium on foreclosures and, in some states, complete moratoria on debt collection practices. At least one trade organization representing creditors and collectors has filed suit to invalidate one of those moratoria. Everyone in the financial industry, from creditors and collectors to consumers and regulators, are worried about what comes next. Will there be a wave of consumer lawsuits as creditors and collectors begin collecting, foreclosing, and repossessing? This article recounts that, as early as March 4, 2020, the CFPB received its first complaint related to the pandemic, and through May 31, 2020, 1,309 complaints were filed mentioning the pandemic. This article explains those complaints, breaking them down by industry segments, to provide a great picture of the types of conduct that are leading consumers to complain. --- [Nicholas P. Mooney II](#)

---

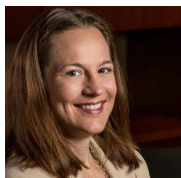
## **HUGE TCPA NEWS: FCC Holds System That Text Platforms Requiring Manual Number Entry Are Not ATDS Under TCPA**

*"In big ruling, FCC holds that text platforms requiring manual number entry are not Automatic Telephone Dialing Systems ("ATDS") under the TCPA."*

**Why this is important:** The TCPA generally prohibits a person from calling or texting someone on a cellular phone using an ATDS. The P2P Alliance, a coalition of providers and users of peer-to-peer text messaging services, had filed a petition for clarification asking the Commission to clarify that text messaging platforms requiring a person to manually send each text message one at a time are not subject to the TCPA. Last Thursday, the FCC issued a ruling that the TCPA does not restrict text messaging platforms if the platform "is not capable of originating a call or sending a text without a person actively and affirmatively manually dialing each one." In so ruling, the FCC rejected the National Consumer Law Center's position that manual number entry texting platforms enable marketers to spam cell phones, explaining that "The TCPA does not and was not intended to stop every type of call." --- [Tai Shadrick Kluemper](#)

---

## **Featured Attorney Spilman Profile**



### **Angela L. Beblo**

Counsel  
304.340.3852  
[abeblo@spilmanlaw.com](mailto:abeblo@spilmanlaw.com)

Angela L. Beblo is Counsel in Spilman Thomas & Battle's Charleston, West Virginia office. Her primary areas of practice are consumer finance and litigation. She represents and counsels clients regarding numerous federal and state consumer protection laws, including the Fair Debt Collection Practices Act, Telephone Consumer Protection Act, Fair Credit Reporting Act, Gramm-Leach-Bliley Act, Truth in Lending Act, Regulation Z, Real Estate Settlement Procedures Act, the National Bank Act, West Virginia Consumer Credit and Protection Act, Uniform Commercial Code, and

state unfair and deceptive practices.

She also defends financial institutions and other creditors in individual and class action litigation involving alleged violations of state and federal consumer protection laws in connection with home mortgage loans, student loans, unsecured loans, automobile financing, credit card accounts, and consumer credit sales.

Ms. Beblo has been listed by *West Virginia Super Lawyers* as a Rising Star. She earned her bachelor's degree, *cum laude*, at Bucknell University and her law degree at the University of Pittsburgh School of Law, with certificates in International and Comparative Law and in Intellectual Property and Technology Law.

---



This is an attorney advertisement. Your receipt and/or use of this material does not constitute or create an attorney-client relationship between you and Spilman Thomas & Battle, PLLC or any attorney associated with the firm. This e-mail publication is distributed with the understanding that the author, publisher and distributor are not rendering legal or other professional advice on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use.

Responsible Attorney: Michael J. Basile, 800-967-8251