

Client Alert

January 2020

US Supreme Court to Weigh in on Personal Jurisdiction and Constitutionality of TCPA Auto-Dialing Ban

Earlier this month, the US Supreme Court agreed to weigh in on two issues with important consequences for business. The first involves the scope of specific personal jurisdiction—i.e., when businesses can be sued outside of their home states for specific controversies. The second concerns the constitutionality of the prohibition in the Telephone Consumer Protection Act (TCPA) on automated dialing and prerecorded/artificial voices.

The personal jurisdiction issue comes out of two consolidated cases: *Ford Motor Company v. Montana Eighth Judicial District Court*, No. 19-368, and *Ford Motor Company v. Bandemer*, No. 19-369. Both concern an important longstanding dispute regarding specific personal jurisdiction, which exists only when a defendant has contacts in the jurisdiction sufficiently related to the alleged injury: Do those in-forum contacts need to *cause* the plaintiff's claim, or is it enough that they are connected to that claim in some other way? The defendant in the first case manufactured an allegedly defective vehicle in Kentucky that eventually wrecked in Montana. The Montana Supreme Court held that Ford's "related" contacts with Montana—advertising, selling and servicing *other* vehicles there—conferred jurisdiction even if those contacts could not have *caused* the plaintiff's claim. In the second case, the Minnesota Supreme Court similarly held that Ford's "related" contacts in Minnesota provided specific jurisdiction, even though they did not cause the accident that occurred there. These two decisions reflect the view of a growing number of states, while other jurisdictions, including many federal appellate courts, have adopted the requirement that a causal relationship must exist. By deciding to hear the case, the Court appears ready to finally resolve this split.

The *Ford* cases are important to companies with connections to multiple states. Can a company's general business efforts in a state—advertising, selling, servicing—give a state court power over it even if those efforts did not give rise to the plaintiff's specific claim? In *Daimler AG v. Bauman* in 2014, the Supreme Court made clear that general (or "all-purpose") personal jurisdiction exists only in states in which a company is "at home"—mainly where it is incorporated or maintains a principal place of business. How the Court decides the *Ford* cases could reaffirm or undermine the importance of that decision.

The TCPA question is raised in *Barr v. American Association of Political Consultants*, No. 19-631 (AAPC). The statute bans the use of automated dialing and/or prerecorded or artificial voices to call and—by FCC rule—text a cellular telephone without the called party's consent. There are limited statutory exceptions, including one added in 2016 for calls made to collect debts owed to or guaranteed by the United States. The Fourth Circuit held that the debt-collection exception violated the First Amendment, but could be severed without invalidating the entire statutory ban. The Court will now decide both the constitutionality and the severability of this exception, which could result in the debt-collection exception's, or the entire statutory ban's, being struck down. The *AAPC* is thus particularly significant for those entities whose activities fall within the government debt-collection exception, but may have consequences for *any* business currently or potentially subject to the TCPA's automated dialing ban.

It is not known yet whether the Court will hear these cases this spring, but if it does, argument would be held in April and decisions would be expected no later than the end of June. Briefing on the merits has just begun, and there is still opportunity for interested parties to submit their views as amicus curiae.

This update is brought to you by the issues and appeals group at Hunton Andrews Kurth LLP. The group was recently named to the *National Law Journal's* "Appellate Hot List" for 2019, and has extensive experience in federal and state appellate courts across the country, including in the Supreme Court of the United States.

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