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Are Text Messages Calls? Seventh Circuit's *Steidinger* Decision Reshapes TCPA Litigation Landscape

SPEAKERS

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In this episode of *The Consumer Finance Podcast*, host Chris Willis is joined by colleagues Stefanie Jackman and Brian Hays to discuss the Seventh Circuit's landmark July 2026 ruling in *Steidinger v. Blackstone Medical Services*, a unanimous decision holding that text messages do not qualify as "telephone calls" under § 227(c)(5) of the Telephone Consumer Protection Act (TCPA), eliminating a private right of action for National Do Not Call Registry violations based solely on text message communications.

The trio unpacks the court's textualist reasoning, which anchored the definition of "telephone call" to the plain meaning of the term at the time of the TCPA's 1991 enactment — when a telephone was understood as an instrument for reproducing sounds at a distance, and the first text message had not yet been sent. They also examine how *Steidinger* relates to the Ninth Circuit's earlier decision in *Howard*, which reached the opposite conclusion under a different TCPA subsection, and whether a genuine circuit split now exists that the Supreme Court will be compelled to resolve.

The conversation then turns to practical implications for litigators and compliance teams. Brian walks through how defense counsel should be leveraging *Steidinger* in pending cases within and outside the Seventh Circuit, what to expect from plaintiffs pivoting to state telemarketing statutes and state attorney general enforcement actions, and how class definitions are likely to shift. Stefanie delivers a clear compliance message: *Steidinger* is not a green light to abandon text message compliance controls. Section 227(b) liability, FCC enforcement authority, and a growing patchwork of state laws remain fully intact, and consent remains the most important risk management tool available.

The episode closes with broader context on how *Steidinger* fits into the post-*Loper Bright* and post-*McLaughlin* era of TCPA jurisprudence, in which courts are increasingly willing to reject long-standing FCC interpretations and reexamine foundational assumptions about the statute's scope.

Transcript

Podcast: *The Consumer Finance Podcast*
Episode: Are Text Messages Calls? Seventh Circuit's Steidinger Decision Reshapes TCPA Litigation Landscape
Host: Chris Willis
Guests: Stefanie Jackman and Brian Hays

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Chris Willis (00:05):
Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services regulatory practice. And today we're going to be talking about a very important litigation development, that is a key new decision from the Seventh Circuit involving the Telephone Consumer Protection Act. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, troutmanfinancialservices.com and consumerfinancialserviceslawmonitor.com. And be sure to check out all of our other podcasts: the *FCRA Focus*, the *Crypto Exchange*, *Payments Pros*, and *Moving the Metal*. All of those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and tell us how we're doing. Now, as I said, today we're going to be talking about a new Seventh Circuit case that decided the question about whether a text message is a call under the Telephone Consumer Protection Act. And joining me to talk about that are two of my partners. One of them is very familiar to you because she's a frequent guest on the podcast, Stefanie Jackman, who she and I have now been working together for 17 years together.

Stefanie Jackman (01:11):
Don't tell people that, Chris.

[laughter]

Chris Willis (01:14):
But we also have a new face on the podcast, or a new voice, I should say, and that's Brian Hays, who's one of our CFS litigation partners in Chicago. So, Brian, welcome to the podcast.

Brian Hays (01:24):
Thanks for having me. I appreciate it.

Chris Willis (01:25):
Okay, so we're going to be talking about the TCPA. And before we even get to talking about this decision, I think it's important to note for our audience, Stefanie, that the TCPA is enjoying something of a comeback in terms of case filing numbers in 2026, and that makes this a particularly timely episode for us to air. Do you want to just say a couple of words about that?

Stefanie Jackman (01:46):
Yeah. This case and some others that Brian and I are going to talk about… And by the way, I'm also really excited to have Brian joining the podcast. He is a incredibly experienced TCPA class action lawyer who I have really enjoyed having the opportunity to work with given our merger a year ago. So, also echoing, welcome to the podcast. The cases that we're going to talk about today, the Seventh Circuit decision and a prior Ninth Circuit decision, have been causing my phone, and probably Brian's as well, to ring with lots of questions about, can we stop thinking about texts as being subject to the TCPA? There have also been questions about other newer technologies like RCS, forget what that stands for, but it's an evolving type of text-adjacent communication technology. What about things like WhatsApp? How are those configured under the TCPA? And at the same time, we see the plaintiffs' bar continuing to challenge the scope of consent, the understanding of the intent and scope

of any revocations, challenging or preparing to challenge the use of newer technologies like those I mentioned, as well as AI within the context of communicating with consumers. And all of this is in the framework of also waiting to see what will happen with the stayed FCC February 2024 revoke-all rule, which right now, the effective date is at least pushed out until January. And while I don't know this to be the case, it wouldn't surprise me in light of some of the things we're talking about today to see it pushed again. But we'll have to find out and see.

Chris Willis (03:22):
Okay, well, let's jump in and talk about the Seventh Circuit decision. The case is called Steidinger, I think, and it was decided on July 14, 2026. So before we get into the legal decision that the court gave us, why don't you set the stage for us, Stefanie, and tell us what the case was about?

Stefanie Jackman (03:38):
Absolutely. So the facts of the case were fairly straightforward, which is part of why the legal outcome is very interesting and the question that was posed here. In the Steidinger case, I agree with you, that's how I think it should be pronounced as well, but people can let us know if it's different, the defendant was sending various marketing messages by text that were promoting home sleep tests that the defendant made available. According to the allegations of the complaint, the plaintiff, Seth Steidinger, and a class of individuals, because this was filed as a putative class, claimed that they kept receiving these texts even after asking that they stop, registering their numbers on the National Do Not Call Registry, and taking other steps that they contended should have stopped the texts, but they were unsuccessful in doing so. That led Mr. Steidinger to file a consolidated class action in the Central District of Illinois, asserting violations of Section 227(c)(5) of the TCPA. And that's the TCPA's Do Not Call private right of action provision. And also under the Florida Telephone Solicitation Act. The key provision of Section 227(c)(5) gives consumers a private right of action when they've, "received more than one telephone call within any 12-month period" in violation of the FCC's Do Not Call regulations. And it allows for the standard TCPA damages, $500 per violation, which can be trebled to $1,500 if the conduct is determined to be willful. And as we all know, in a class action alleging TCPA violations, that can add up to enormous exposure quickly.

Chris Willis (05:14):
Okay. So obviously, since the plaintiff is complaining about getting texts, I guess the central question for the Seventh Circuit is, is a text a, "telephone call" under that provision of the TCPA, right?

Stefanie Jackman (05:25):
That's exactly right, Chris. And the defendant moved to dismiss on that basis. They were arguing that Section 227(c)(5) only creates a private right of action for unwanted phone calls because the express language says calls, voice calls, not text messages. And frankly, the district court judge, Judge Hawley, agreed and dismissed the TCPA claims and declined to exercise supplemental jurisdiction over the Florida Telephone Solicitation Act claim. And that led to the plaintiff's filing an appeal with the Seventh Circuit. And then the outcome of that appeal was unanimous from the panel. The panel, comprised of Judges Kirsch, Pryor, and Maldonado, and they affirmed the trial court's dismissal.

Chris Willis (06:10):
Okay. And let's talk about the reasoning of the Seventh Circuit, because I think it's going to become very important later. I would have guessed, I guess, not knowing anything about the TCPA, that there would be a bright-line rule that something can't be a telephone call if you can send emojis over it. But that probably wasn't the

Seventh Circuit's reasoning, was it?

Stefanie Jackman (06:28):
No, but it was a masterclass in textualism, really, in my view, when you read the opinion. Judge Kirsch wrote for the panel, and the analysis proceeded in a couple layers. The first layer was looking at the plain meaning of the term at the time the TCPA was enacted, which is 1991. So there, the Seventh Circuit looked at contemporaneous 1991 dictionary definitions and found that a telephone was an instrument for reproducing sounds at a distance. And that's going to be really critical. Reproducing sounds at a distance. And that a call meant to get or to try to get into communication by telephone. So in 1991, the court decided a telephone call meant a voice communication. And what's really interesting is that the court also observed that the first text message ever sent didn't happen until December 1992, a year later. So with regard to at least the original public meaning of a telephone call at the time of enactment, the court determined it was simply impossible that it could have encompassed or contemplated a text message.

Chris Willis (07:35):
But I'm sure the plaintiffs argued that a statute's language can be applied to new technologies. What about the argument that a text is just a modern application of calling someone as we would have understood it before the advent of text messages?

Stefanie Jackman (07:49):
Yeah, absolutely. And frankly, we have seen that exact argument made time and time and time again in TCPA cases and in connection with other federal statutes, as well as in interpretive rulings and other guidance from the regulators like the FCC on how the TCPA relates to things like text, ringless voicemail, and other e-faxes, or doesn't relate, as the case is for e-faxes. But the court here addressed that head-on. They acknowledged that the statute's meaning is fixed at enactment according to existing precedent in the Seventh Circuit, but that also… New applications can arise as the world changes. And the court's response in the opinion was essentially, even when you try to evolve it to cover new technologies, text messages don't produce sounds. And that's a fundamental characteristic of a telephone call as it was defined in 1991, not something that was peripheral. And a text message isn't a new way of making a call; it is a categorically different form of communication with a consumer. But really, the power of the opinion is in how it's structured in continuing to address this. The court also noted that in other parts of Section 227(c), Congress did use a broader term, the term "telephone solicitation," which the TCPA, as enacted, is defining to include a telephone call or message. But then in subsection (c)(5), so same section, the private right of action provision, Congress chose a narrower term, the term "telephone call." And applying statutory canons of interpretation, a deliberate word choice matters. And here, it's clear from the other parts of 227(c), Congress knew how to say a message and chose not to in (c)(5).

Chris Willis (09:47):
But Stefanie, what about the fact that didn't the FCC have a long-standing position that calls included text messages? What did the Seventh Circuit do with that?

Stefanie Jackman (09:56):
Yeah, and I've been advising clients for many years and frankly, as we'll talk about later, still do advise that we consider text messages to be subject to the TCPA because of that position. But this is where the Supreme Court's decision last year in McLaughlin becomes critical. And we've talked about this in other podcasts and I've heard it

at different industry events. The TCPA is a place where the fact that courts no longer have to defer to federal agency interpretations, like the FCC, of statutes that they are empowered to interpret, like the TCPA, can really impact and change the lay of the land when we encounter these going forward. And we just don't know the extent to which that's going to happen because that decision just came down last year. But here, this is a great example of the Seventh Circuit applying its own ability to analyze these issues, considering the FCC's prior guidance as well, if it chooses to do so, and ultimately concluding that the FCC's interpretation didn't control. And in doing so, the court noted that the FCC extended the Do Not Call Registry protections to text expressly as a result of Section 227(c)(3), which refers to telephone solicitations, but not (c)(5) in its interpretive opinions, which refers only to telephone calls. So again, at least in the mind of the Seventh Circuit, even the FCC was using different statutory language, which should mean that there is a difference in scope.

Chris Willis (11:36):

Okay. So, Brian, let me go to you now because this Seventh Circuit decision isn't just exciting on its own, and it is exciting, of course, as Stefanie just related it to us, but it's exciting because it now may have created a circuit split between the Seventh and the Ninth Circuit about whether text messages are covered under the TCPA. So there was, six months ago, a decision from the Ninth Circuit in a case called Howard. So can you explain how these two decisions relate to one another, and do we really have a legitimate circuit split on this issue?

Brian Hays (12:08):

Thanks, Chris. And yes, I do think that there is a legitimate circuit split that hopefully the Supreme Court will resolve in the not-too-distant future. And that really is the question that everybody's been asking in the TCPA bar. So the Ninth Circuit case you mentioned, the Howard case. In that case, the Ninth Circuit held that a text message does qualify as a call, but under a different section, under Section 227(b) of the TCPA, which is the section that governs automatic telephone dialing systems and artificial and prerecorded voice calls. And so in that case, the Ninth Circuit looked at the dictionary definition of call at the time the TCPA was enacted in 1991, and it focused just on the definition that said that a call is communicating with or attempting to get in communication with a person by telephone. And the Ninth Circuit finished their analysis there. They did not do what the Seventh Circuit did, which was look at what the definition of a telephone was back in 1991. And so for the Ninth Circuit, because a text message is a way of communicating by telephone, the Ninth Circuit found that text messages were covered by Section 227(b). As Stefanie talked about earlier, the Seventh Circuit looked at not only the definition of call, but also at the definition of telephone in 1991. And at the time, telephone was limited to an instrument for producing sounds at a distance. So, like Stefanie said, if you put together the 1991 definition of call and the definition of telephone, you get a result where telephone calls are limited to communications by sound. Now, back to the Howard case, interestingly enough, the Ninth Circuit actually affirmed the dismissal of that lawsuit on the ground that the text message that had an embedded video in it did not qualify as an artificial or prerecorded voice message because the video required the consumer to press play. And so the case was dismissed and affirmed on dismissal on other grounds.

Chris Willis (14:14):

Okay. So, Brian, based on that analysis, do you think these cases are actually in conflict or are they distinguishable from one another?

Brian Hays (14:22):

So, Chris, the answer to that is yes and yes. So the cases are clearly distinguishable. But I think that the conflict at the heart of the decisions about whether there's a private right of action for individuals to sue for text messages creates a real conflict. So, technically, the cases are different in that Howard involved 227(b), which prohibits calls using an ATDS or an artificial prerecorded voice, while Steidinger involves Section 227(c)(5), which deals with telephone calls to numbers on the DNC registry. But what's important here is the conceptual level. The Seventh and Ninth Circuits have fundamentally different views on whether the word call in the TCPA should encompass text messages. And that's a genuine split that I think that the Supreme Court will be interested in resolving when it's presented to them.

Chris Willis (15:15):
And what are people in the industry saying about their view of the likelihood of Supreme Court involvement in this issue?

Brian Hays (15:21):
So I think commentators that I've seen are in universal agreement that, yes, the Supreme Court is going to take up this question when it's presented to them. We have seen over the last number of years the Court has granted cert for a remarkable number of TCPA cases. They're one of the most popular class action lawsuits to file. We're on pace this year for a record number of TCPA class actions to be filed. And so I think the Supreme Court understands that this is a large area with huge stakes for corporations, and they're going to want to step in.

Chris Willis (15:56):
Okay. Well, we're going to stay tuned and see if that happens. But in the meantime, you know we love to be practical here on *The Consumer Finance Podcast*. And so we're going to talk about some practical implications of this. Here, though, we're going to split the discussion between practical implications in litigation and practical implications for compliance decisions. So, Brian, for the first of those, practical implications in litigation, let me stay with you. For litigators like you who handle TCPA class actions, what does the Seventh Circuit opinion mean in terms of any changes in strategy or arguments or anything like that now that the case has come out a few weeks ago?

Brian Hays (16:33):
Sure, Chris. So for defense lawyers, obviously this is a major weapon for all the district courts within the Seventh Circuit, so Illinois, Indiana, and Wisconsin. So anyone who has a pending Section 227(c)(5) do-not-call case that involves text messages, or frankly I would say even if it's a Section 227(b) case that involves text messages, defendants should look to be filing notice of supplemental authority for this case or filing a motion to dismiss or a motion for judgment on the pleadings. Seventh Circuit's opinion is very clean, it's well-reasoned, and it's directly on point. Now, outside of the Seventh Circuit, Steidinger isn't binding on those district courts, but it's now the first federal appellate decision that directly addressed the question of whether calls create a private right of action under Section (c)(5). And so it's powerful persuasive authority nationwide. And I know I've already been citing notices of supplemental authority in my pending cases around the country. Now, for plaintiffs' lawyers, the message is clear, do not file text message cases in the Seventh Circuit. So they're going to be moving their cases to continue to file in the Ninth Circuit or to test these cases out in other jurisdictions. We can also expect to see the plaintiffs bringing more claims under state telemarketing statutes because many states expressly include text messages in their statutes. So as we saw in Steidinger, there was a Florida Telephone Solicitation Act claim that went along with that. And so we can expect to see a lot more of those from the plaintiffs.

Chris Willis (18:10):
What about the ever-important issue of class certification? Does the Seventh Circuit decision have any impacts on how parties will argue class certification or structure proposed classes?

Brian Hays (18:22):
Absolutely. And so before Steidinger, plaintiffs would often bring classes defined as receiving all calls and text messages, so for both voice calls and for text messages as a single case. At least within the Seventh Circuit, we're going to see that that's going to be split and they're just going to be looking for class definitions that include voice messages. We'll probably still see the combined calls and texts in other circuits until we get rulings from those appellate courts. And from a defense perspective, obviously it gives a powerful tool. You can argue that there's going to be different analysis for the court to decide whether calls and texts are covered in those other circuits. And I think the thing that's probably going to be most frightening is I think we're, from the class action level, we may see an uptick in enforcement actions brought by state attorneys general because the Seventh Circuit was pretty clear that they don't believe that their ruling would prevent the states themselves from bringing these enforcement actions for text messages because they limited the Steidinger holding to just the private right of action for individuals seeking the $500 statutory damages. So I would expect to see some more states' attorneys general stepping in and bringing some enforcement actions.

Chris Willis (19:38):
Okay. So now let's shift our practical focus to what we should think about from a compliance standpoint when we plan marketing and other programs that involve outreach by text messages. Stefanie, I want to go to you for this. Based on the Seventh Circuit decision, is it now wide open? Let's just text as much as we want. What should we do in terms of advising clients in this area?

Stefanie Jackman (20:00):
Yeah, it's not wide open. As Brian pointed out, this is just a decision from one circuit. There's a different decision from a different circuit, and other circuits haven't weighed in. So I think you really have to focus as a compliance person within your organization on what Steidinger does and doesn't change. Here's what it changed, as Brian said, in the Seventh Circuit, you're not going to get a class action by a private plaintiff for violating Section 227(c)(5) solely for sending marketing texts, even if those numbers are on the Do Not Call Registry. But that doesn't mean that we can or should ignore opt-out requests or the Do Not Call Registry. So first, Section 227(b), the use of an autodialer to send text communications or the sending or use of artificial or prerecorded voice messages, which I really hope nobody is putting links in their text messages and sending them and causing themselves all that trouble, but some people may be, that remains fully intact. Think about the Howard case that Brian mentioned. So that liability potential is unaffected, at least right now. The Seventh Circuit's decision was involving a totally different section of the TCPA. The FCC's enforcement authority also remains untouched. So courts maybe don't have to listen to the FCC, but that doesn't mean the FCC isn't going to listen to the FCC and pressure you in different ways to continue to adhere to its guidance on this. And third, state laws. The Florida Telephone Solicitation Act, for instance, which was the plaintiff's backup claim here, explicitly covers texts. And it's not the only one. You also need to be mindful of state collection laws, state invasion of privacy laws, and state UDAP laws that can be used to argue that a failure to honor a consumer's request not to receive certain communications, regardless of if other statutes apply, needed to be honored and it is a violation of law for that not to have happened.

Chris Willis (21:59):
Okay. So I've been duly chastened back from my view that there's a free-for-all for texts now. Thank you, Stefanie.

Stefanie Jackman (22:04):
I don't think you really had that view anyway, Chris.

Chris Willis (22:05):
No, it's true. But what is our bottom-line compliance takeaway here?

Stefanie Jackman (22:09):
Keep honoring stop requests and keep checking and scrubbing and taking out people who are on the Do Not Call Registry in your marketing campaigns. Continue maintaining robust consent records. Continue maintaining robust revocation records. Review your text technology to make sure you're not unknowingly using an autodialer or something that might qualify as an autodialer or, I should say, automatic telephone dialing system, let's use the actual TCPA language, or including prerecorded messages or things like that, especially as you start to implement different AI technologies that can sometimes help formulate your contact strategies and sometimes send those for you as well. Just look at those to make sure you're still comfortable. While this case reduces one vector, and it's a significant vector of litigation risk, it is definitely not a license right now to relax your compliance controls.

Chris Willis (23:03):
Okay, got it. So let's end with a bit of context. And Brian, I'd like to go back to you for this. So zooming out, where does the Steidinger case fit within the broader landscape of the TCPA? So we saw obviously Loper Bright do away with Chevron deference, and then the Supreme Court in McLaughlin applying that principle to the FCC's interpretations of the TCPA. Is this just the beginning of more of this kind of stuff happening with the TCPA?

Brian Hays (23:29):
I think that's absolutely right, that this is just the beginning. And we are seeing that already around the country with defendants and plaintiffs challenging other FCC interpretations of other sections of the TCPA. So obviously we've got the texts, whether texts are calls here in the Steidinger case and in the Howard case from the Ninth Circuit. I'm sure we're going to see opinions coming out of the other circuits as well in the coming months. But as I said, it's not just text versus calls question. McLaughlin opened the door for courts to reconsider other long-standing FCC interpretations. So just recently we had the 5th Circuit come in and rule that prior express written consent is no longer required. Prior express consent, which is the plain language of the statute, doesn't mean prior express consent plus is the way they put that. We're also starting to see people renew their challenges that had sort of died off as to whether or not for Do Not Call purposes, a cell phone even qualifies as a residential number, since you carry your cell phone with you all over the place as opposed to the old-fashioned residential landlines. So we'll see a lot more people challenging these prior interpretations.

Chris Willis (24:41):
Got it. And we love to make predictions here on *The Consumer Finance Podcast*. And Brian, I'd like to invite you to make one too. Do you have any prediction on the timing of when the Supreme Court might take up this very important "text is a call or isn't a call" issue?

Brian Hays (24:55):
Unfortunately, I don't. It's very hard to predict. The plaintiffs sort of took their loss in the Seventh Circuit and chose not to appeal since they have lots of other courts around the country that they can file these lawsuits in. Plaintiffs didn't appeal the Howard decision either because they took their win, texts are calls, in the Ninth Circuit, and that keeps the gravy train running for them on TCPA class actions. So I hope it doesn't take as long as it did for the Supreme Court to get the challenge of what the definition of automatic telephone dialing system is. But I do think that both plaintiffs and defendants are going to be hesitant to be the test case to take this up to the Supreme Court. So hopefully sooner rather than later, but there's nothing pending right now that's ripe for the Supreme Court to grant cert on.

Chris Willis (25:44):
Okay, got it. And Stefanie, I'm going to give you the final word in this particular podcast. Do you have any final thoughts to leave the audience with in light of everything that we've discussed over the course of this episode?

Stefanie Jackman (25:54):
Yeah. Know what subsection's at issue. Don't mistake a win in one subsection of the TCPA for blanket immunity on the rest of it. And just watch this space. The TCPA is in the most active period of judicial reinterpretation since its enactment over 25 years ago, and the rules are shifting under our feet every day.

Brian Hays (26:16):
And Chris, just one last thing, and I always push this to my clients every time I can. Still, the most important thing in the context of telemarketing, whether it's by text or by phone, is get consent. Consent, consent, consent. It's much better to have consent from thousands and thousands of consumers that you never need than to need consent in a class action and end up paying billions or tens of millions of dollars. So consent, consent, consent.

Chris Willis (26:44):
Well, of course. And as Stefanie said, we're going to be watching this space too, and our audience can expect regular updates on our blogs and on this podcast about any other material developments relating to the TCPA. So Brian, Stefanie, thanks for being on the podcast today. And of course, thanks to our audience for listening in as well. As I said, don't forget to visit and subscribe to our blogs, troutmanfinancialservices.com and consumerfinancialserviceslawmonitor.com. And while you're at it, why not visit us on the web at troutman.com and add yourself to our Consumer Financial Services email list? That'll allow us to send you copies of our alerts and advisories, as well as our invitations to our occasional industry-only webinars. And of course, stay tuned for a great new episode of this podcast hitting your feed every Thursday afternoon. Thank you all for listening.

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