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Eleventh Circuit grants en banc review to resolve controversial TCPA standing ruling

by James F. Bogan III

We have written about the Eleventh Circuit's controversial ruling in *Salcedo v. Hanna*, 936 F.3d 1162 (11th Cir. 2019). *See Eleventh Circuit reinvigorates Spokeo in single text message TCPA case* (Sep. 11, 2019). In *Salcedo*, the Eleventh Circuit concluded that receipt of a single, unsolicited text message did not constitute "concrete injury" sufficient to establish Article III standing, although the ruling was carefully limited to the allegations advanced in that case (the receipt of a single, unsolicited text message). The *Salcedo* decision has never been endorsed by another federal appellate court.

In the Eleventh Circuit, however, Salcedo has not only been followed but arguably extended. In *Drazen v. Pinto*, 51 F.4th 1354 (11th Cir. 2002), a panel of the Court of Appeals reversed a class settlement and remanded for further analysis of whether a single cellphone call sufficed to trigger Article III standing. *See Eleventh Circuit holds that every class member must have standing for a class action settlement to be approved* (Aug. 22, 2022).

On March 13, 2023, the Eleventh Circuit vacated the panel decision in *Drazen* and ordered the appeal to be reheard en banc. *Drazen v. Godaddy.com, LLC*, No. 21-10199, 2023 WL 2468505 (11th Cir. Mar. 13, 2023). This may portend a full reexamination of the *Salcedo* decision by the full Court of Appeals, or it may address only whether *Salcedo* properly should be extended from the "single text" context to the "single call" circumstances of *Drazen*. At a minimum, we expect many class action plaintiff groups to press the Eleventh Circuit to undo its uniquely restrictive standing requirements as imposed in *Salcedo*.