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Appellate Report

AGGREGATED STATUTORY DAMAGES “SO SEVERE AND OPPRESSIVE” HELD TO VIOLATE DUE PROCESS

Remedies; TCPA; due process limits on aggregated statutory damages

Wakefield v. ViSalus, Inc. (9th Cir.) 51 F.4th 1109.

Wakefield brought a class action against ViSalus under the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1), alleging that ViSalus unlawfully sent her and the other class members automated telephone calls featuring an artificial or prerecorded voice message without prior express consent. After a three-day trial, the jury returned a verdict against ViSalus, finding that it sent 1,850,440 prerecorded calls in violation of the TCPA. Because the TCPA sets the minimum statutory damages at \$500 per call, the total damage award against ViSalus was \$925,220,000. ViSalus challenged the damages award as unconstitutionally excessive, but the district court denied the motion.

On appeal, ViSalus renewed that challenge. ViSalus did not challenge the TCPA's statutory framework as to the \$500 amount for a single violation; several courts have held that the TCPA's \$500 civil remedy in isolation does not violate due process on a per-violation basis. Instead, ViSalus argued that even if the TCPA's statutory penalty of \$500 per violation is constitutional, an aggregate award of \$925,220,000 in this class action case was so “severe and oppressive” that it violated ViSalus's due process rights. The Ninth Circuit agreed and reversed the damages award as excessive.

Juries and legislatures enjoy broad discretion in awarding damages. The due process clauses of the Constitution, however, set outer limits on the magnitude of damages awards. Such constitutional due process concerns are heightened where, as here, statutory damages are awarded as a matter of strict liability when plaintiffs are unable to quantify any actual damages they have suffered from receiving the robocalls.

Over a century ago, in *St. Louis, I. M. & S. Ry. Co. v. Williams* (1919) 251 U.S. 63, 67, the Supreme Court declared that damages awarded pursuant to a statute violate due process only if the award is “so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.” Courts in this and other circuits have grappled with the constitutionality of statutory damages awards challenged in the aggregate where the award is unusually high because of either the large number of violations at issue in a single dispute or, most relevant to this case, the aggregation of damages in class action litigation.

Several considerations support the application of the *Williams* constitutional due process test to aggregated statutory damages awards even where the prescribed per-violation award is constitutionally sound. First, although *Williams* did not address an aggregated damages award, the logic of the case does not turn on the amount of the per-violation penalty. Rather, *Williams* suggests a general reasonableness and proportionality limit on damages awarded pursuant to statutes, taking into account statutory goals. *Williams* imposes a constitutional limit on damages that are “so severe and oppressive” as to no longer bear any reasonable or proportioned relationship to the “offense.” Thus, where aggregation has resulted in extraordinarily large awards wholly disproportionate to the goals of the statute, *Williams* implies a constitutional limit may require reduction.

Second, the goals of a statute in imposing a per-violation award may become unduly punitive when aggregated. And statutory penalties, unlike jury awards, are not generally disaggregated by purpose. Indeed, most statutes combine deterrence, compensatory, and punitive goals into a single lump sum per violation. Compensation and deterrence aims can

be overshadowed when damages are aggregated, leading to damages awards that are largely punitive and untethered to the statute's purpose. Where a statute's compensation and deterrence goals are so greatly overshadowed by punitive elements, constitutional due process limitations are more likely to apply.

The court thus concluded that the aggregated statutory damages here, even where the per-violation penalty is constitutional, are subject to constitutional limitation in extreme situations – that is, when they are “wholly disproportioned” and “obviously unreasonable” in relation to the goals of the statute and the conduct the statute prohibits. As with punitive damages awarded by juries and per-violation statutory damages awards, a district court must consider the magnitude of the aggregated award in relation to the statute's goals of compensation, deterrence, and punishment and to the proscribed conduct.

The court stressed that only very rarely will an aggregated statutory damages award meet the exacting *Williams* standard and exceed constitutional limitations where the per-violation amount does not. Constitutional limits on aggregate statutory damages awards therefore must be reserved for circumstances in which a largely punitive per-violation amount results in an aggregate that is gravely disproportionate to and unreasonably related to the legal violation committed.

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