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Judge won't let plaintiffs' lawyers contact DirecTV customers for mass arbitration – yet

(Reuters) - U.S. District Judge Mark Cohen of Atlanta ruled Thursday that plaintiffs' lawyers in a Telephone Consumer Protection Act class action against DirecTV cannot use information they obtained under a protective order to launch a mass arbitration campaign against the company.

The judge denied a motion by plaintiffs' lawyers at Lieff Cabraser Heimann & Bernstein, Meyer Wilson and Wade Grunberg & Wilson to modify a protective order shielding the names and telephone numbers of more than 9,000 DirecTV customers whose data was disclosed to the company's expert witness in the TCPA case. The plaintiffs' lawyers asserted that DirecTV violated a different law, the Satellite Television Extension and Localism Act (STELA), when it disclosed its customers' information to the company's TCPA expert witness.

They first tried to add a STELA claim to the ongoing TCPA class action, but the 11th U.S. Circuit Court of Appeals ruled in February ([801 Fed.Appx. 723](#)) that the DirecTV consumer contract requires the claim to be arbitrated. Plaintiffs' lawyers had obtained the customer list that DirecTV disclosed to its expert witness, but DirecTV had turned over the information under a protective order. Plaintiffs' lawyers argued that the customers on the list would not even know of the alleged STELA violation unless Judge Cohen granted permission for them to contact the customers.

They argued both that the protective order permitted such contact because the alleged STELA violation arose from the TCPA case and that, under the 11th Circuit's "good cause" standard, Judge Cohen should modify the protective order to allow the DirecTV customers to pursue claims that could be worth thousands of dollars apiece.

DirecTV, represented by Mayer Brown, urged Judge Cohen to leave the protective order in place, arguing, among other things, that the STELA allegations were meritless.

In Thursday's decision, the judge agreed with DirecTV that, as it is written, the protective order under which it produced the customer names precludes plaintiffs' lawyers from contacting those customers.

But whether to modify the protective order was a closer call. The judge cited DirecTV's own representations to him and the 11th Circuit about its "consumer-friendly" approach to arbitration. And it was DirecTV, Judge Cohen said, that won an 11th Circuit ruling to force customers to arbitrate their potential STELA claims. It might not be in the interest of justice, the judge wrote, to allow DirecTV to wield the protective order as a means of preventing customers from finding out about their prospective arbitration claims.

"DirecTV has made its bed by compelling arbitration, and it should not be able to avoid arbitrating STELA claims," the judge said.

But ultimately, Judge Cohen ruled, plaintiffs' lawyers have not yet shown the merit of the prospective STELA allegations. No authority, he said, stands for the proposition that the protective order should be modified to allow plaintiffs' lawyers to contact the DirecTV customers "prior to a finding that STELA has been violated."

The judge also said that the notice proposed by plaintiffs' lawyers, which invited DirecTV customers to contact those lawyers, amounted to attorney advertising.

Judge Cohen held that plaintiffs' lawyers can revive their request to modify the protective order if named plaintiff Rene Romero completes arbitration of his STELA claim.

"We are hopeful we can proceed to arbitration and prevail, and if we do, we plan to come back as (Judge Cohen's) order permits," said Romero counsel Jonathan Selbin of Lieff Cabraser in an email. Selbin said the judge "seems to get the Catch-22 many consumers face, all the more so here where they have no basis to even know DirecTV violated their rights."

A spokesman for DirecTV parent AT&T said in an email statement, "We carefully guard our customers' confidential information and are pleased the court prohibited the plaintiff's lawyers from invading their privacy to sell them legal services they never requested."

The case is Cordoba v. DirecTV, No. 1:15-CV-03755 in federal court in Atlanta.

(Reporting by Alison Frankel)

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