



---

Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | [www.law360.com](http://www.law360.com)  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

---

## 11th Circ. Revives TCPA Suit Against Tampa Bay Buccaneers

By **Nathan Hale**

Law360, Miami (December 1, 2014, 10:58 PM ET) -- The Eleventh Circuit on Monday revived a proposed junk fax class action against the Tampa Bay Buccaneers, ruling on two issues of first impression as it found the NFL franchise's unaccepted settlement offers to the named plaintiffs did not render moot the individual or class claims.

The ruling reversed a U.S. district court's order dismissing the suit, which Jeffrey M. Stein and five other named plaintiffs brought under the Telephone Consumer Protection Act on allegations that in 2009 and 2010 the team peppered more than 100,000 fax numbers with advertisements for tickets to home games that could be purchased through the club's website or through Ticketmaster.

Before the plaintiffs had moved for class certification, Buccaneers LP, which operates the NFL franchise, offered settlement offers under Federal Rule of Civil Procedure 68, offering each named plaintiff complete relief of their claims — \$1,500 for each fax they received.

The district court rejected a hastily filed motion for class certification as premature and dismissed the case as moot, even though the plaintiffs never accepted the offers.

"After the offers lapsed, and indeed after the district court entered its order dismissing the case, the legal relationship between BLP and the named plaintiffs was precisely the same as before the offers were made," the appeals panel said. "The named plaintiffs had claims against BLP under the Telephone Consumer Protection Act; BLP retained all its defenses; no ruling had been made on the validity of the claims or defenses; and no judgment had been entered. BLP had not paid the plaintiffs, was not obligated to pay the plaintiffs and had not been enjoined from sending out more faxes."

Adding up those facts, the Eleventh Circuit found the claims were not moot.

The district court's ruling was "flatly inconsistent" with Rule 68, the appeals panel held, saying the purpose of the rule is that a party that rejects a settlement offer, litigates and fails to get a better result must then pay its opponent's costs.

As to class claims, the Eleventh Circuit found that even if the individual claims were found to be moot, the class claims can remain alive and the named plaintiffs may still be able to pursue them.

The court said it is clear that the current case still presents a live controversy: the plaintiffs hold the Buccaneers violated the TCPA and owe all class plaintiffs money damages, which the team denies.

Counsel for both sides did not immediately respond to requests for comment late Monday.

The Eleventh Circuit's decision brings it in line with the majority of circuit courts that have weighed in on the issue.

Based on this ruling, the same three-judge panel also issued a three-page ruling Monday reversing the dismissal of a proposed class action against several affiliates of ADF Companies, the nation's second-largest Pizza Hut franchisee.

"We're extremely pleased that the Eleventh Circuit reversed in both the Stein and Keim cases and rejected the popular defense tactic of trying to moot out class actions by making offers of judgment offering only individual relief," Keim plaintiffs counsel Scott L. Nelson of Public Citizen Litigation Group told Law360.

Circuit Judge Beverly B. Martin, U.S. Court of International Trade Judge Richard K. Eaton and U.S. District Judge Robert L. Hinkle sat for the Eleventh Circuit.

The Stein plaintiffs are represented by James M. Thomas of the Law Office of James M. Thomas PA and Joseph J. Siprut and Gregg M. Barbakoff of Siprut PC.

The Buccaneers are represented by Barry A. Postman, Justin C. Sorel, Scott A. Cole and Thomas Scott of Cole Scott & Kissane PA.

The Keim plaintiffs are represented by Scott David Owens, Scott L. Nelson and Adina H. Rosenbaum of Public Citizen Litigation Group.

ADF is represented by David S. Almeida, Karin Dougan Vogel and David M. Poell of Sheppard Mullins Richter & Hampton LLP, Moises Melendez of Sedgwick LLP and Charles Stuart Davant.

The cases are Stein et al. v. Buccaneers LP, case number 13-15417, and Keim et al. v. ADF Midatlantic LLC et al., case number 13-13619, both in the U.S. Circuit Court of Appeal for the Eleventh Circuit.

--Additional reporting by Andrew Scurria. Editing by Philip Shea.

---

All Content © 2003-2015, Portfolio Media, Inc.