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## Tampa Bay Rays Can't Escape TCPA Suit Over Texts

By **Rick Archer**

Law360 (November 30, 2018, 5:12 PM EST) -- A Florida federal judge has denied MLB's Tampa Bay Rays' attempt to dismiss a second putative class action accusing the team of sending unwanted text messages, saying it is too early to question whether the plaintiff consented to the texts.

In an order filed Thursday, U.S. District Judge Elizabeth Kovachevich rejected the Rays' argument that James Thomas' Telephone Consumer Protection Act claims should be dismissed because he gave prior consent to receive the texts by signing up for their texting service.

"The court declines defendant's invitation to look beyond the four corners of plaintiffs' complaint to determine whether plaintiff provided his consent to receive defendant's text messages," she said.

Thomas filed suit in May, alleging that in 2017 and 2018 the Rays sent him multiple unsolicited text messages promoting ticket sales and team events, in violation of the TCPA.

The Rays moved to dismiss the complaint in August, claiming Thomas received the messages because he had subscribed to the team's text message service and that each text contained instructions on how to end the subscription and stop future texts. The team also argued Thomas had not shown he sustained any concrete injury by receiving the texts and had not provided any evidence that there was a class of people who had received the messages without consent.

Judge Kovachevich, however, found that Thomas' pleading was sufficient for the case to move forward. She said courts have found unwanted texts can cause concrete injuries, such as wasting the recipient's time or cellphone battery life, and that it was too early in the case to consider class certification issues.

Counsel for the Rays declined to comment. Counsel for Thomas did not immediately respond to requests for comment Friday.

Last week, a different judge used the some of the **same reasoning** to reject the Rays' motion to dismiss a nearly identical suit filed by a different individual in **September**.

The Rays are just the latest professional sports franchise to get hit with a TCPA suit. The **Buffalo Bills**, **San Diego Chargers**, Los Angeles Lakers and Los Angeles Clippers have all been hit with nearly identical suits since 2012, to name just a few.

Thomas is represented by Joseph J. Siprut of Siprut PC and Benjamin W. Raslavich of Kuhn Raslavich PA.

The Rays are represented by Joseph H. Varner III, Bradford D. Kimbro and Charles Wachter of Holland & Knight LLP.

The case is James Thomas v. Tampa Bay Rays Baseball Ltd., case number 8:18-cv-01187 in the Middle District of Florida.

--Editing by Alanna Weissman.

