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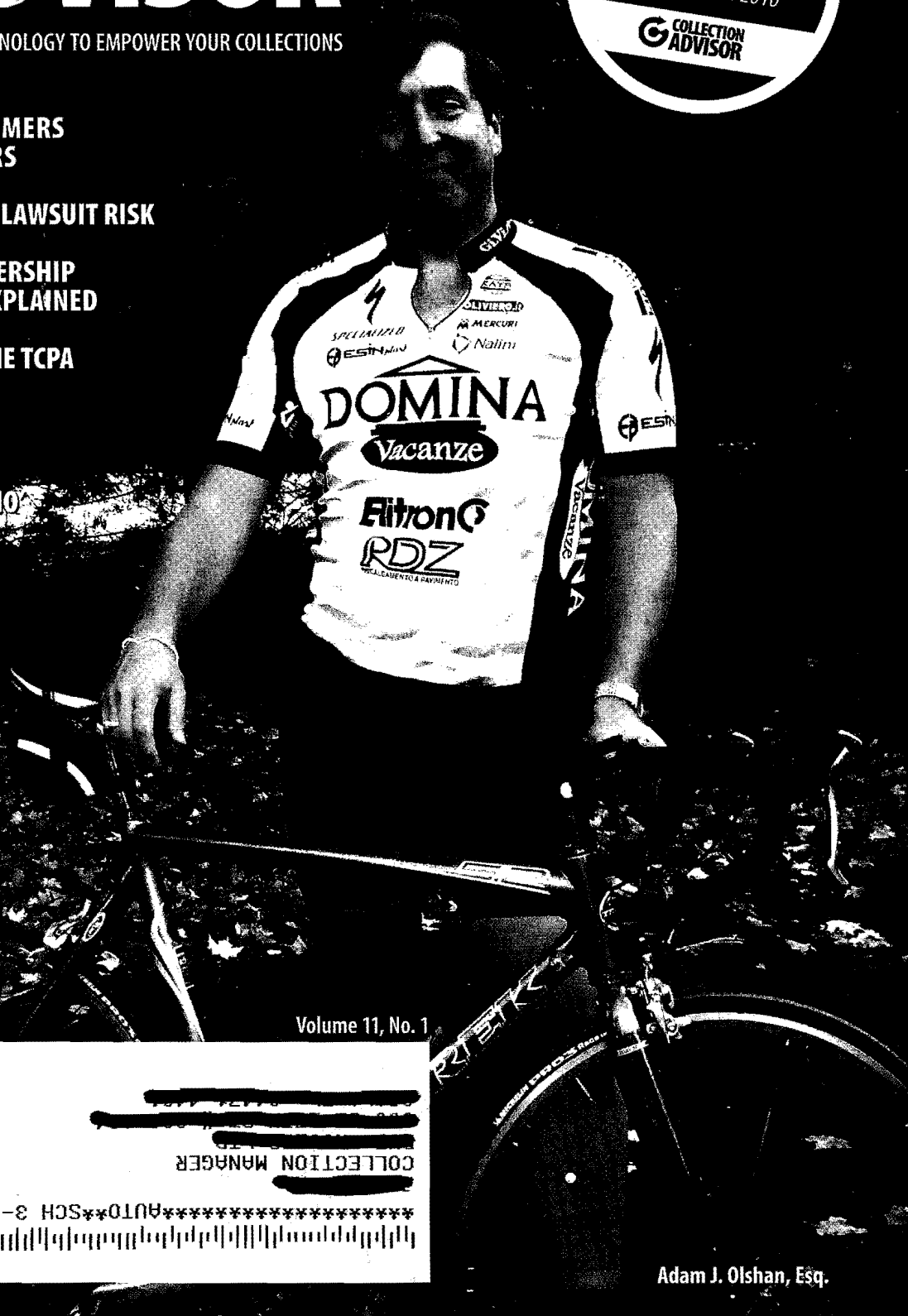
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THE BIG WORRY NOW IS THE TCPA

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THE BIG WORRY NOW IS THE TELEPHONE CONSUMER PROTECTION ACT

BY T. STEEL ROSE

The number one compliance topic for collection compliance for 2011 is the Telephone Consumer Protection Act (TCPA), according to several ACA Board of Director members and industry insurance providers. The proposed enforcement actions have fines up to \$1 million and potential injunctive relief where agencies could be shut down until a case is solved, according to some industry experts; "making it a much tougher environment in which to operate," one expert stated.

"The big worry now is the TCPA," said Leslie Bender, Esq. "If you have a standard approach where you don't scrub for cell phones that poses the biggest problem."

ACA International has obtained allies at The House Energy and Commerce committee in Congress which has oversight over the FTC, according to Mark Schiffman, Director of Public Relations, ACA International. Adam Peterman, director of Federal Government Affairs at ACA International in Washington DC formed a coalition that has obtained the cooperation of 11 Congressmen to help change TCPA legislation.

In a letter to the FCC, these bipartisan members of Congress asked the FCC not to enact a proposed rule change to the TCPA and allow the use of autodialers and pre-recorded messages without prior written consent when placing calls to consumers on wireless telephones. ACA has previously filed comments with the FCC in May and June and plans to continue to encourage Congress to take immediate action to modernize the TCPA.

"We will continue to advocate amending the TCPA to improve communication between and among consumers and those service providers with which consumers choose to engage," said ACA General Counsel and Vice President of Legal and Government Affairs, Valerie Hayes. "The TCPA should recognize a consumer's expectation and right to receive calls on their wireless

phone using an autodialer or pre-recorded message by those with whom the consumer has an established relationship. These are essential business efficiency tools," she stated.

New technologies have transformed how consumers communicate and expect to be communicated with by friends, family and companies with whom they have a business relationship. Mobile phones, e-mail and texting have replaced the landline telephone and fax machine as essential communication tools for most Americans. Today, more than 80 percent of Americans own a cell phone and a rapidly growing number of consumers consider their cell phone as their primary telephone versus a land line. In fact, more than 20 percent of American house-

holds are now cell phone only.

According to Hayes, ACA shares the same perspective as 97 percent of the American consumers who participated in a recent survey conducted by the organization, that the repayment of duly owed consumer debt is an essential personal responsibility. "But, debt cannot be collected if our members cannot communicate with consumers," Hayes said.

ACA believes that proper communication between businesses and consumers is a vital component of a strong consumer protection environment. It ensures consumers are made aware of changes to the status quo and provides an opportunity to address pre-

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"... It's rarely a TCPA only claim, it comes along with the FDCPA and FCRA claims, in addition to the individual state laws."

Ben Johnson, Director of Risk Management Services — Insurance, Integrity First Insurance at Cornerstone Support, Inc.

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issues that stave off otherwise unavoidable, adverse financial action, such as foreclosure, negative credit reporting or litigation.

Collection agencies have concerns: "Damages are high and are a problem for everyone in the revenue cycle. You can't use an auto-dialer to contact a cell phone without prior permission," according to Karolyn Rubin, last year's ACA president. "The challenge is scrubbing [debtor lists] because of the cost involved," she explained.

The financial risk is real: Janice St. Barton, vice president of ACA International's Collector's Insurance Agency, announced that they could no longer cover TCPA violations.

Ben Johnson, Director of Risk Management Services — Insurance, Integrity First Insurance at Cornerstone Support, Inc. said, "Some carriers are excluding TCPA claims, but we are able to shop various carriers. Some are silent on TCPA. The law was originally designed to prevent telemarketers. Collectors have a legitimate reason to place a call. One problem you run into is a large number of debtors use cell phones as their home numbers. We have had a lot of interest since the announcement. A lot of policies are coming due on February 1, 2011, so we have had a lot of calls in the last two weeks. In some cases we can offer TCPA as co-insurance."

"If your deductible is \$5000 and your claim is \$10,000. You would have a 10% charge above the deductible. Some offer TCPA with co-insurance," explained Johnson. "Right now it's a case by case basis. Some have an endorsement to decide whether or not they can cover it determined during the underwriting process. Then there are the others that are silent" Johnson noted.

"It is unfortunate," Johnson said. "It probably was not intended when the law was written. Consumer protection attorneys have focused on this especially in Florida, New York and Texas. It is just becoming another dart they can throw along with their other violations. It seems to have increased in the last two years."

"We are seeing some claims. It's another area to target collection agencies. It's rarely a TCPA only claim, it comes along with the FDCPA and FCRA claims, in addition to the individual state laws," Johnson added.

Collection agencies bear the burden; "It's a huge problem. It puts us at huge risk every day, especially if companies are not scrubbing their numbers. It may be a home number that is a cell number. It's the data tracking, 'did the creditor get permission to call this number?' We have never had a lawsuit, but the larger firms have. We can't stop using phone calls. There is much more risk. Members are in shock and the next year will tell the difference," mentioned Harry Strausser, president of Remit Corporation.

Traveler's has provided a lot of success working with ACA members. The letter review is now every three years, based on the success of their letter writing review process. Scrubbing and compliance will be more important, and a move to get permission up front, but that will take time. It is another challenge in an industry fraught with regulation.

To discover what you can and can't do when using auto-dialers, cell phones and leaving messages you can obtain a teleseminar

from the ACA recorded Feb. 25, 2009; entitled: Don't Get Hung Up: Dial ACA's TCPA Experts and MAP attorneys: John H. Bedard, Esq., and David Kaminski, Esq., Carlson & Messer LLP and learn how the TCPA affects your everyday business compliance program. Bedard and Kaminski have been at the forefront of the notable TCPA case, *Leckler vs. Cashcall*. In the seminar they review the FCC Order on TCPA and explore suggestions for implementation.

"Speaking for myself, it's a confusing problem," Tom Stockton, president of CMI in Texas and elected vice president of ACA. "We use predictive dialers and not autodialers. An autodialer randomly dials sequential numbers and then markets to them at inconvenient times. Predictive dialers use the numbers that the debtor provided when applying for credit," he clarified, "which makes it a prior business reason for connecting to the consumer."

"We consider ourselves more consumer-friendly; we are fighting for the 97% of consumers who pay their bills as opposed to the 3% that don't," Stockton added. "Technology has surpassed the law. More and more of the country has cell phones, and the way they pay for them has changed. ☺"

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