

still prove that the defendant sent an unsolicited fax to a fax recipient and that the fax recipient received it. That much is sufficient to award \$500 in damages. If the plaintiff desires to prove an "actual monetary loss," the case would require a greater involvement of the fax recipient in the lawsuit and proof of those discomfort types of damages, to the extent that a "monetary loss" can be established. But that is not essential to a basic claim.

The fact that Congress included in the Act a statutory damage provision of \$500 as an incentive to encourage the filing of claims which would otherwise be too di minimis to bother with, does not necessitate a conclusion that such claims are too "personal" to be assigned. On the contrary, it is an acknowledgment that Congress felt that individuals bothered by such faxes NEED some incentive to pursue TCPA claims. Assignment does just that.

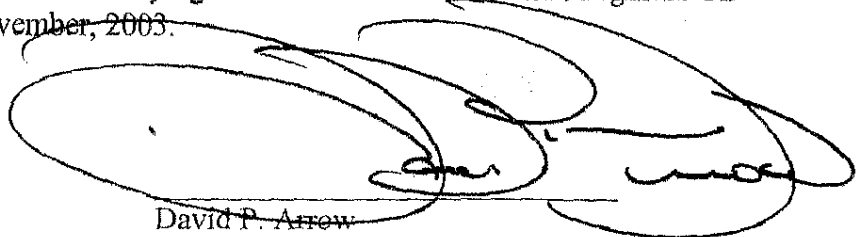
The court is led to understand that the plaintiff "purchases" TCPA claims for a nominal amount and then independently pursues TCPA lawsuits as assignee. The Act permits damages of \$500 or the actual monetary loss, "whichever is greater." By limiting the involvement of the original fax recipients in its lawsuit, the assignee essentially gives up the opportunity to seek a greater level of damages. Far from violating a public policy against champerty, such a practice would likely limit damages.

The fact that treble damages are available for "willful or knowing" violations does not militate against assignability. It appears that, in the context of the TCPA, that phrase means that a fax sender has failed to establish or implement practices and procedures to prevent violations of the Act, NOT the level of suffering or damage resulting from a fax transmission. Thus, even the treble damages provision is not of a "personal" nature analogous to personal injury lawsuits.

It is the court's understanding that the plaintiff is pursuing this TCPA claim strictly as assignee. As the assignee of a claim, the plaintiff is specifically limited to the damages suffered the assignor, Dawn Knox. Thus, the plaintiff is not just pursuing some "generalized grievance."

It appears that Congress intended the TCPA not as a windfall for fax recipients, but as a disuasive mechanism against widespread abusive faxing. Contrary to the assertion of the defendant, the plaintiff is not "circumventing the entire purpose of the statute." On the contrary, by "bundling" claims and pursuing claims that would otherwise be ignored by individual fax recipients, the plaintiff is actually behaving consistent with the apparent purpose and intent of the Act.

IT IS THEREFORE ORDERED denying the defendant's Motion for Judgment On The Pleadings this 7th day of November, 2003.



David P. Arrow
Judge Pro Tem

Copies of the foregoing were
mailed to the following individuals
on 11/12/03, 2003:

Mr. David Hampton
Attorney at Law
Attorney for the Plaintiff

Ms. Barbara McCloud
Attorney at Law
Attorney for the Defendant

By: ps