



Molly K. McGinley

Partner

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OVERVIEW

Molly K. McGinley concentrates her practice at K&L Gates in commercial litigation with a focus on complex litigation, including investment company litigation, securities litigation and consumer class action defense. Molly is a member of the firm's securities and transactional litigation practice and class action litigation defense groups. Molly has litigated in numerous state and federal jurisdictions, representing a broad range of clients, including small companies, Fortune 500 Companies and investment advisers. She has handled various commercial disputes, including contract and business tort litigation and internal investigations. Molly represents clients in numerous industries including energy, healthcare, digital health, technology, and financial services.

Investment Company and Securities Litigation

Molly's investment company litigation experience includes representing investment advisers and independent trustees in class actions, derivative lawsuits, and actions brought pursuant to Section 36(b) of the Investment Company Act of 1940. She also has represented publicly held corporations and corporate officers and directors in securities derivative and class action lawsuits.

Consumer Class Action Defense

Molly's consumer class action defense experience includes litigating numerous Telephone Consumer Protection Act (TCPA) claims in various jurisdictions and advising clients with respect to ongoing TCPA compliance. She also is a leader of the firm's biometric data compliance and defense affinity group and has advised clients with respect to putative class action litigation under the Illinois Biometric Information Privacy Act (BIPA) and compliance with BIPA. Molly also has defended products manufacturers in consumer fraud lawsuits, involving claims under various state consumer fraud statutes, breach of implied and express warranty claims and unjust enrichment claims.

PROFESSIONAL BACKGROUND

Prior to joining the firm, Molly was a law clerk for the Honorable Mary Anne Mason in the Chancery Division of the Circuit Court of Cook County, Illinois

ACHIEVEMENTS

- Certified Information Privacy Professional/United States (CIPP/US)
- Selected as Leading Lawyer in Commercial Litigation by Law Bulletin Media, 2017, 2018, 2019 & 2020
- Selected as an Emerging Lawyer in Commercial Litigation by Law Bulletin Media, 2017, 2016, & 2015

PROFESSIONAL / CIVIC ACTIVITIES

- Molly currently serves as the Pro Bono Coordinator of the Chicago office and as a member of the Firmwide Pro Bono Committee.
- Molly is involved in the Firm's Women in the Profession Group and helped create the Chicago Mastermind Program, an initiative aimed at supporting the business and professional development goals of lawyers.
- Molly is a member of the Global Advisory Board for Women In Law Empowerment Forum ("WILEF") and serves as Co-Chair of WILEF Chicago.

SPEAKING ENGAGEMENTS

- "Developments in Investment Management Litigation," K&L Gates 2018 Investment Management Conference, November 2018
- "Shifting the Data Breach Paradigm," National Association of Women Lawyers ("NAWL") Mid-Year Meeting, March 1, 2018
- "General Data Protection Regulation and Biometric Privacy Laws: Panic is Not A Compliance Requirement." A GC's Primer on Privacy and Cybersecurity, January 17, 2018
- "Developments in Investment Management Litigation," K&L Gates 2018 Investment Management Conference, January 2018
- "Biometric Information Processing: Are the Rewards Worth the Risks?" International Association of Privacy Professionals ("IAPP") Web Conference, December 21, 2017
- "Biometric Data Risks," K&L Gates Webinar, December 2017
- "Developments in Investment Management Litigation," K&L Gates 2017 Investment Management Conference, January 2017
- "Developments Under the Telephone Consumer Protection Act," K&L Gates Webinar, September 2016
- "Developments in Investment Management Litigation," K&L Gates 2015 Investment Management Conference, October 2015
- "Developments in Investment Management Litigation," K&L Gates 2014 Investment Management Conference, October 2014

- “Stop Before You Hit 'Send!': The Risks of Using Fax, Email or Telephone to Transmit Unsolicited Commercial Messages,” Client-Sponsored National Teleconference Series, June 2012
- “Dispute Resolution in the United States,” Presentation to Foreign In-House Counsel, November 2008

EDUCATION

- J.D., Loyola University Chicago School of Law, 2005 (*Editor-in-Chief, Loyola University Chicago Law Journal*)
- B.A., Bowdoin College, 2000 (*cum laude*)

ADMISSIONS

- Bar of Illinois
- Supreme Court of the United States
- United States Court of Appeals for the Eighth Circuit
- United States Court of Appeals for the Seventh Circuit
- United States District Court for the Central District of Illinois
- United States District Court for the Eastern District of Wisconsin
- United States District Court for the Northern District of Illinois
- United States District Court for the Northern District of Ohio

THOUGHT LEADERSHIP POWERED BY HUB

- 23 June 2021, Florida Law Would Dramatically Expand Autodialer Restrictions (*BlogPost*)
- 1 April 2021, It's No Joke: In 1 April 2021 Decision, Supreme Court Significantly Limits Definition of "ATDS" Under the TCPA (*Alerts/Updates*)
- 10 December 2020, Supreme Court Hears Argument on Definition Of ATDS Under TCPA (*BlogPost*)
- 10 July 2020, Supreme Court Agrees to Review Growing Circuit Split on Definition of ATDS (*BlogPost*)
- 7 July 2020, Supreme Court Declares TCPA Government-Debt Exception Unconstitutional but Severs Provision to Preserve Remainder of TCPA (*BlogPost*)
- 1 July 2020, The FCC Clarifies the Definition of ATDS (*BlogPost*)
- June 2020, COVID-19: Paved With Good Intentions – Regulatory Pitfalls to Manufacturing and Marketing COVID-Related Consumer Products (*Webinar*)
- 13 April 2020, Second Circuit Goes Against the Tide; Adopts Broad Definition of Autodialer (*BlogPost*)

- 20 March 2020, COVID-19: UPDATED Emergency and Healthcare Calls and Texts (*Alerts/Updates*)
- 10 March 2020, COVID-19: NY State of Emergency Imposes Ban on Telemarketing Calls (*Alerts/Updates*)
- 25 February 2020, *Strength in Numbers*: The Seventh Circuit Joins the Third and Eleventh Circuits in Limiting the Definition of an Automatic Telephone Dialing System under the TCPA (*Alerts/Updates*)
- 30 July 2019, Circuit Court Affirms Holding Reducing TCPA Award by 98% (*BlogPost*)
- 25 June 2019, Supreme Court Declines to Define Scope of Deference Courts Should Apply to FCC TCPA Orders (*BlogPost*)
- 25 March 2019, The Biometric Bandwagon Rolls On: Biometric Legislation Proposed Across the United States (*Alerts/Updates*)
- 22 March 2019, Attorneys General Express Widespread Support for TRACED Act Reintroduced in the Senate to Stop Illegal Robocall Scams (*BlogPost*)
- 25 January 2019, “No Harm, Still Foul”: Actual Harm Not Required for Plaintiffs Under Illinois Biometric Privacy Act (*Alerts/Updates*)
- 14 December 2018, FCC Votes to Create Reassigned Numbers Database (*BlogPost*)
- 3 December 2018, District Court Adopts Narrow ATDS Interpretation, Dismisses TCPA Suit (*BlogPost*)
- 27 November 2018, Bipartisan Bill Introduced In The Senate To Thwart Illegal Robocall Scams (*BlogPost*)
- 14 November 2018, U.S. Supreme Court To Rule On Hobbs Act Deference To FCC’s TCPA Rules (*BlogPost*)
- 5 October 2018, In Wake of ACA Int’l, Ninth Circuit Adopts Expansive Definition of ATDS (*BlogPost*)
- 23 July 2018, Third Circuit Affirms Judgment for Investment Adviser in Section 36(b) Action (*Alerts/Updates*)
- 12 June 2018, BIPA Trending: Illinois Biometric Information Privacy Act Litigation Once Again On the Rise (*Alerts/Updates*)
- 23 May 2018, FCC Seeks Comment on TCPA Following D.C. Circuit’s Decision in ACA International (*BlogPost*)
- 9 May 2018, Trade Groups Petition the FCC to Adopt a Narrow Interpretation of Autodialer Under the TCPA (*BlogPost*)
- 20 March 2018, United States District Court for the Northern District of Illinois Grants Summary Judgment in “Manager of Managers” Excessive Fee Case (*Alerts/Updates*)
- 16 March 2018, The D.C. Circuit Calls Out the FCC – Striking Key Elements of Its 2015 TCPA Order, While Upholding Certain Provisions (*Alerts/Updates*)
- 2 March 2018, Spokeo Fails Facebook: Privacy Violation Held to Constitute Concrete Harm Under Illinois Biometric Information Privacy Act (*Alerts/Updates*)

- 2 February 2018, District Court Dismisses TCPA Class Action for Pharmacy Reminder Calls Under “Emergency Purposes” Exception (*BlogPost*)
- January 2018, A GC’s Primer on Privacy and Cybersecurity (*Webinar*)
- 8 January 2018, Second Circuit Affirms Dismissal of Action Against Healthcare Provider but Cautions Careful Review of TCPA Exemptions (*BlogPost*)
- 7 December 2017, District Court Dismisses TCPA Complaint Because Plaintiff Failed to Follow Defendant’s Opt-Out Instructions (*BlogPost*)
- December 2017, Biometric Data Risks (*Webinar*)
- 7 November 2017, Litigation Under Illinois Biometric Information Privacy Act Highlights Biometric Data Risks (*Alerts/Updates*)
- 21 September 2017, District Court Decertifies TCPA Class Following Invalidation of Solicited Fax Rule (*BlogPost*)
- 30 August 2017, District Court Denies Class Certification in TCPA Case; Finds No Injury Possible Where Call Recipients Consented to Calls, Even if Consent Not in Writing (*BlogPost*)
- 18 July 2017, District Court Confirms That Text Messages Completing Consumer-Initiated Transaction Are Not Telemarketing (*BlogPost*)
- 26 June 2017, Second Circuit Holds That Contractual Consent May Not Be Unilaterally Revoked Under The TCPA (*BlogPost*)
- 16 June 2017, U.S. House Judiciary Committee Examines Lawsuit Abuse and the TCPA (*BlogPost*)
- 9 June 2017, Dish Network Ordered to Pay \$280 Million Fine, Damages in Federal TCPA Lawsuit (*BlogPost*)
- 26 May 2017, Dish Network to Pay \$61.5 Million in Damages After TCPA Trial (*BlogPost*)
- 27 April 2017, Rite Aid Wins Summary Judgment in TCPA Class Action for Flu Shot Reminder Calls (*BlogPost*)
- 4 April 2017, D.C. Circuit Holds that FCC Lacks Authority to Require Opt-Out Notices for Solicited Faxes, Vacates FCC Order (*Alerts/Updates*)
- 1 March 2017, Proposed Fairness in Class Action Litigation Act of 2017 Seeks to Curb Attorney Abuses of Class Action Device and Expand Class Action Defendant Protections (*Alerts/Updates*)
- 1 March 2017, FCC Solicits Comments on Petitions Seeking Clarification of “Prior Express Consent” (*BlogPost*)
- 17 February 2017, Second Circuit Affirms Denial of Class Certification in TCPA Case on Ascertainability Grounds Due to Lack of Recipient List (*BlogPost*)
- 7 February 2017, Rep. Virginia Foxx Seeks to Prohibit Political Robocalls to Numbers on Do-Not-Call Registry (*BlogPost*)

- 6 February 2017, Ninth Circuit Finds Article III Standing, Dismisses TCPA Action for Failure to Effectively Revoke Consent (*BlogPost*)
- 25 January 2017, Jury Awards \$20M Verdict For Violation of National Do-Not-Call Rules (*BlogPost*)
- 23 January 2017, Ajit Pai to be Named New FCC Chairman (*BlogPost*)
- 10 January 2017, Court Reaffirms Dismissal of TCPA Claims By Professional Plaintiff (*BlogPost*)
- 23 December 2016, Sixth Circuit Reverses Denial of Class Certification and Dismissal Under Rule 68 in Purported Unsolicited Fax Case (*BlogPost*)
- 15 December 2016, FCC Chairman Tom Wheeler Announces He Will Not Serve Out Term under New Administration (*BlogPost*)
- 5 December 2016, Courts Continue to Be Skeptical of Professional Plaintiffs in TCPA Cases (*BlogPost*)
- 2 December 2016, FCC Reiterates Its position that Robotexts are Subject to TCPA (*BlogPost*)
- 27 October 2016, Second Circuit Finds Offer of Judgment on Individual Claims Negates Standing for Class (*BlogPost*)
- 21 October 2016, D.C. Circuit Keeps the Conversation Going in ACA Challenge to FCC's 2015 Order (*BlogPost*)
- 1 September 2016, Professional Plaintiffs Beware: Courts Dismiss TCPA Claims on Standing Grounds (*BlogPost*)
- 15 August 2016, District Court Finds Social Media Company Is Not "Sender" of Calls Under TCPA (*BlogPost*)
- 11 August 2016, FCC Clarifies TCPA Applicability for Certain Calls from Utilities, Schools (*BlogPost*)
- 13 July 2016, Seventh Circuit Reaffirms Stance On Sender Liability In TCPA Fax Litigation (*BlogPost*)
- 12 July 2016, FCC Finds Federal Government and its Contractors Immune From TCPA Liability (*BlogPost*)
- 6 July 2016, Twitter Loses Summary Judgment Bid in TCPA Claim (*BlogPost*)
- 19 May 2016, Supreme Court Decision on Article III Injury-in-Fact in Spokeo Potentially Impacts Class Certification (*BlogPost*)
- 16 May 2016, Political Organizations Mount First Amendment Challenge to TCPA's Cell Phone Ban Restricting Autodialed and Prerecorded Voice Calls to Constituents (*BlogPost*)
- 16 May 2016, Sixth Circuit Rejects Application of Agency Principles to Fax Broadcast Liability Under TCPA (*BlogPost*)
- 11 May 2016, Eighth Circuit Articulates New Ascertainability Standard in TCPA Class Actions (*BlogPost*)
- 27 April 2016, Circuit and District Courts Grapple with Questions Raised in the Wake of Campbell-Ewald v. Gomez (*BlogPost*)

- 26 April 2016, Seventh Circuit Holds That TCPA Fax Regulations Do Not Impose Strict Liability for Actions of Contractors (*BlogPost*)
- 5 November 2015, Third Circuit Applies FCC's New TCPA "Autodialer" Interpretation (*BlogPost*)
- 3 September 2015, Sixth Circuit Finds No TCPA Liability For Debt Collection Calls Made To Phone Number Provided After Inception of Credit Relationship (*BlogPost*)
- 20 August 2015, Update: Plaintiffs Seek Rehearing En Banc of Seventh Circuit Decision on Remand in *Jones v. Harris Associates* (*Alerts/Updates*)
- 12 July 2015, Court Awards Individual Plaintiff \$229,500 in Damages Under TCPA (*Articles*)
- 8 July 2015, Update: Sixth Circuit Limits Scope of 'Unsolicited Advertisement' under the TCPA (*Articles*)
- 24 June 2015, Sixth Circuit Limits Scope of 'Unsolicited Advertisement' under the TCPA (*Articles*)
- 28 April 2015, Last Week to File for Retroactive Waiver of FCC Rule Requiring Opt-Out Notice on All Fax Advertisements (*Alerts/Updates*)

OTHER PUBLICATIONS

- "Biometric Privacy: It's Not Just an Illinois Issue," *Best Lawyers*, October 1, 2020
- "What You Need to Know About COVID and Biometric Privacy," *Industry Today*, June 19, 2020
- "New Jersey Eyes Regulation of Biometric Data," *New Jersey Law Journal*, 27 June 2019
- "Why False Advertising Claims Need To Be More Specific," *Law360*, 4 December 2015
- "An Important Reading of High Court's Advisory Fee Opinion," *Law360*, August 28, 2015

NEWS & EVENTS

- 2 November 2020, Numerous K&L Gates Diverse and Women Lawyers Recognized for Leadership and Legal Accomplishments (*Press Release, Rankings & Recognitions*)
- 29 October 2020, TCPA: What's New, Noteworthy, and Next (*Event*)
- 9 September 2020, Four Chicago Partners Listed Among 2020 Notable Women in Law by *Crain's Chicago Business* (*Rankings & Recognitions*)
- August 2020, K&L Gates Lawyers Provide Insights on Impact of COVID-19 Across Various Industries (*Media Mention*)
- 6 December 2017, K&L Gates Launches Multidisciplinary Biometric Data Compliance and Defense Practice (*Press Release*)

AREAS OF FOCUS

- Securities and Transactional Litigation
- Biometric Data Compliance and Defense
- Class Action Litigation Defense
- Complex Commercial Litigation and Disputes
- Data Protection, Privacy, and Security
- Digital Health
- Product Liability

INDUSTRIES

- Automotive
- Consumer Products
- Energy
- Manufacturing
- Technology
- Telco

EMERGING ISSUES

- Social Media Law

REPRESENTATIVE EXPERIENCE

- Defended investment advisers in lawsuits brought pursuant to Section 36(b) of the Investment Company Act in which the plaintiffs alleged that advisory fees were excessive.
- Defending several clients in putative class action lawsuits brought under the Illinois Biometric Information Privacy Act and advising clients with respect to ongoing compliance with biometric privacy laws.
- Defended several clients in nationwide Telephone Consumer Protection Act class actions and individual lawsuits, involving unsolicited fax and unwanted telemarketing calls.
- On behalf of a healthcare client, obtained summary judgment in a Telephone Consumer Protection Act case and successfully argued before the United States Court of Appeals for the Eighth Circuit
- Advise healthcare clients with respect to TCPA compliance for text messaging campaigns

- Advise clients with respect to email marketing compliance, including compliance with CAN-SPAM Act.
- Defended the independent trustees of statutory trust and closed-end investment company registered under the Investment Company Act of 1940 in a putative class action lawsuit alleging a loss in the value of the putative class members' investment in the fund's common shares
- Represented a special committee of independent directors in an internal investigation regarding financial transactions
- Represented a publicly traded company and members of the board of directors of the company in shareholder derivative and putative securities class action lawsuits.
- Represented auto parts manufacturer in consumer fraud act class action involving statements on its packaging and in marketing materials.
- Represented an international packaging company in the negotiation of settlement of dispute regarding asset purchase agreement and agreement governing development of new packaging products.
- Defended an auto parts manufacturer in litigation regarding long-term supply contracts disputes with other parts suppliers.
- Represented electronic traders in arbitration before the Chicago Board Options Exchange.
- Defend point of care diagnostics company in complex securities class action asserting claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), Rule 10b-5 thereunder, and Section 20(a) of the Exchange Act and Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 relating to public offering
- Advises major retail energy company with respect to TCPA and state law telemarketing class actions and individual lawsuits in various jurisdictions throughout the country.
- Advise client in energy sector with respect TCPA due diligence issues in connection with potential acquisition of target company.
- Advise client in energy industry with respect to regulatory issues relating to telemarketing.