



# TELECOMMUNICATIONS

## SNAP UP<sup>SM</sup>date

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### **FEDERAL COURT RULES THAT CARRIERS CAN BE HELD LIABLE FOR THE ACTS OF THEIR AGENTS**

*Washington, DC: Based on briefs and oral arguments presented by Technology Law Group*, a judge in the federal District Court for the District of Maryland ruled today that distributors selling prepaid cards may be the lawful agents of the carrier supplying the underlying telecommunications services. The significance of this ruling is that it means that the supplying carrier may be held legally liable for the breach of contract, tortious conduct or other unlawful acts of their distributors and for the damages that result.

In issuing this ruling, the judge refused to dismiss fifteen counts of a complaint brought by TLG on behalf of its distributor client against two carriers—including a major international carrier—

alleging breach of contract, breach of the implied covenant of good faith and fair dealing, intentional misrepresentation/fraud, misrepresentation, tortious interference (numerous counts), defamation, promissory estoppel, *quantum meruit*, unjust enrichment and negligence.

Significantly, the judge also rejected outright the carriers' arguments the federal court did not have jurisdiction over them, as out-of-state companies, as a result of their sales through third party distributors in Maryland. The judge concluded these sales, along with the other conduct of the carriers, created sufficient contacts between the carriers and the State of Maryland to justify the assertion of jurisdiction.

These rulings are significant as they directly rebuff the positions typically taken

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by carriers that they are immune from liability to downstream distributors for the conduct of their "independent" distributors where they sell through telecommunications services through such distributors. Sub-distributors and other parties purchasing cards from distributors may now proceed with greater confidence against their underlying carriers (which often have deeper pockets) as well as against their upstream distributor where the distributor acts in violation of their agreement or their conduct is otherwise unlawful.

To be sure, the case has yet to reach the point where a determination is made as to whether the distributor-defendants are, in fact, the agents of the carriers. However, the fact that the carrier's motions to dismiss were each denied suggests that other distributors no longer need be afraid to seek legal recourse against the carrier(s) providing the underlying network services and that carriers must now pay close attention to the conduct of their distributors and to the complaints of their sub-distributors.

*If you have questions about this case, your rights and obligations as a distributor or carrier, distributor and carrier liability issues generally, or if we may be of assistance to you on other transactional or litigation matters, please feel free to give us a call.*

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*Technology Law Group LLC, is a Washington-based law firm specializing in telecommunications, transactional, litigation and regulatory issues. The attorneys at Technology Law Group can be reached by phone at +1 202 895 1707 and by e-mail at [mail@tlgdc.com](mailto:mail@tlgdc.com). TLG is dedicated to personal service and to providing high quality legal and consulting services that enable clients meet their business objectives.*