

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
WHEELING DIVISION

ELECTRONICALLY  
FILED  
Nov 03 2023  
U.S. DISTRICT COURT  
Northern District of WV

DIANA MEY,

Plaintiff,

v.

Civil Action No.: 5:23-CV-331 (Bailey/Mazzone)

ALLSTATE INSURANCE COMPANY,

Defendant.

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**NOTICE OF REMOVAL**

Defendant Allstate Insurance Company (“Allstate”), pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, hereby removes *Diana Mey v. Allstate Insurance Company*, No. CC-35-2023-C-168, from the Circuit Court of Ohio County, West Virginia, to the United States District Court for the Northern District of West Virginia, Wheeling Division. The grounds for this removal are set forth more fully below:

**BACKGROUND**

1. On September 29, 2023, Plaintiff Diana Mey (“Mey” or “Plaintiff”), acting *pro se*, commenced this action by filing a Complaint in the Circuit Court of Ohio County, West Virginia. (*See* Ex. A, at Complaint.)

2. The Complaint alleges that Allstate violated various provisions of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, and its implementing regulation, 47 C.F.R. § 64.1200, by placing prohibited telemarketing calls. (*See generally id.*) Plaintiff’s Complaint seeks statutory penalties and injunctive relief under the TCPA. (*See id.* ¶¶ 70–76.)

3. Pursuant to 28 U.S.C. § 1446(a), attached as **Exhibit A** is a copy of all pleadings, filings, and other documents served on Allstate in state court.

#### **SUBJECT-MATTER JURISDICTION**

4. The Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1331 because Plaintiff's asserted TCPA claims arise under federal law and present a federal question on the face of the Complaint. *See, e.g., Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 376 (2012).

#### **ALL OTHER REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED**

5. All other requirements for removal under 28 U.S.C. §§ 1441 and 1446 have been satisfied.

6. This notice of removal has been timely filed under 28 U.S.C. § 1446(b)(1), as Allstate removed this action within 30 days of the Complaint being filed in state court and received by Allstate through service of process. Allstate was served through the West Virginia Secretary of State on October 11, 2023, and received the Complaint on October 16, 2023.

7. Allstate is the sole defendant in this action, meaning that all defendants in this action have joined in this Notice of Removal in accordance with 28 U.S.C. § 1446(b)(2),.

8. Venue is proper under 28 U.S.C. §§ 129 and 1441(a), because the Circuit Court of Ohio County, West Virginia is encompassed within the geographical limits of this Court.

9. In accordance with 28 U.S.C. § 1446(d), concurrently with the filing of this Notice of Removal, Allstate will provide written notice of the removal of this action to all other parties and will promptly file a copy of this Notice of Removal with the clerk of the Circuit Court of Ohio County, West Virginia.

As set forth above, all prerequisites for removal of this action to federal court have been satisfied, and removal is proper pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. Accordingly, Allstate respectfully requests that this Court exercise subject-matter jurisdiction over this action.

Respectfully submitted,

/s/ Joseph K. Merial  
Joseph K. Merial (WVSB 11646)  
DINSMORE & SHOHL, LLP  
191 West Nationwide Blvd., Suite 200  
Columbus, Ohio 43215  
Phone: (614) 628-6880  
Fax: (614) 628-6890  
joseph.merial@dinsmore.com  
*Counsel for Defendant Allstate Insurance Company*

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 3, 2023, I served the foregoing via United States mail, postage prepaid, to the following non-CM/ECF participant:

Diana L. Mey  
14 Applewood Drive  
Wheeling, WV 26003  
*Plaintiff Pro Se*

/s/ Joseph K. Merial  
Joseph K. Merial (WVSB 11646)



**Service of Process Transmittal Summary**

**TO:** Shelley Wisniewski, Lead Consultant  
ALLSTATE INSURANCE COMPANY  
100 E PALATINE RD STE 201  
WHEELING, IL 60090-6528

**RE:** Process Served in West Virginia

**FOR:** Allstate Insurance Company (Domestic State: IL)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** DIANA MEY vs. ALLSTATE INSURANCE COMPANY

**DOCUMENT(S) SERVED:** Letter, Summons, Complaint, Statement, Notice

**COURT/AGENCY:** Ohio County Circuit Court, WV  
Case # CC352023C168

**NATURE OF ACTION:** Insurance Litigation

**PROCESS SERVED ON:** C T Corporation System, Charleston, WV

**DATE/METHOD OF SERVICE:** By Traceable Mail on 10/16/2023 postmarked on 10/12/2023

**JURISDICTION SERVED:** West Virginia

**APPEARANCE OR ANSWER DUE:** Within 30 days after this summons and complaint were delivered to you

**ATTORNEY(S)/SENDER(S):** Diana L. Mey  
14 Applewood Drive  
Wheeling, WV 26003  
304-280-1607

**ACTION ITEMS:** CT has retained the current log, Retain Date: 10/16/2023, Expected Purge Date: 10/21/2023  
  
Image SOP

**REGISTERED AGENT CONTACT:** C T Corporation System  
5098 Washington St. W. Ste. 407  
Charleston, WV 25313  
877-564-7529  
MajorAccountTeam2@wolterskluwer.com

**REMARKS:** Documents were served upon the West Virginia Secretary of State on 10/11/2023 and forwarded to CT Corporation.

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the



**CT Corporation**  
**Service of Process Notification**

10/16/2023

CT Log Number 544936142

included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

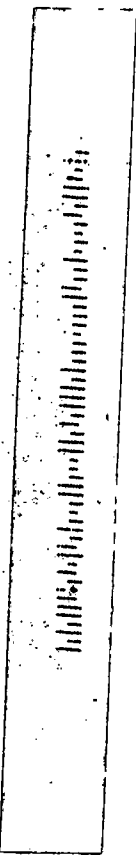
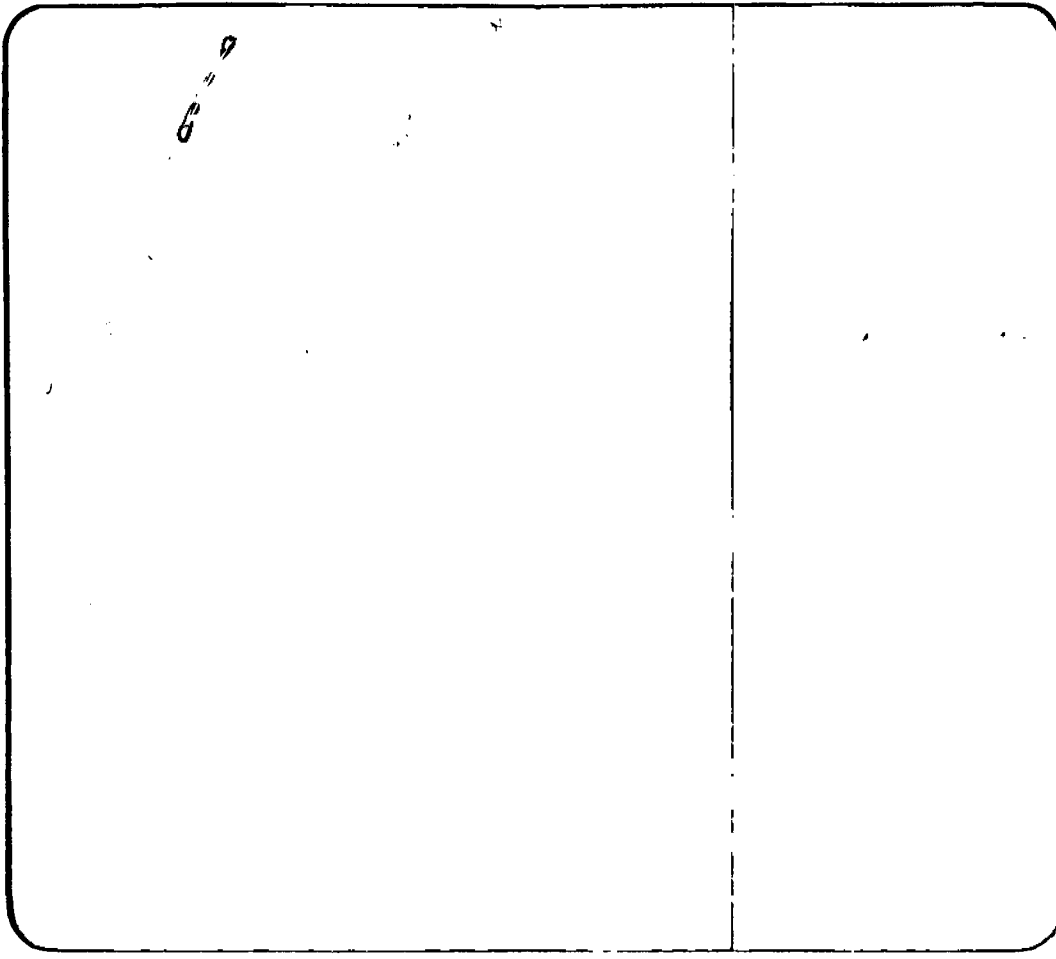
**CERTIFIED MAIL**



US POSTAGE<sup>SM</sup> PITNEY BOWES



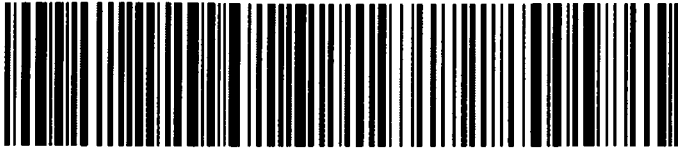
ZIP 25305 \$ 008.62<sup>0</sup>  
02 4W  
0000377395 OCT. 12. 2023



Office of the Secretary of State  
Building 1 Suite 157-K  
1900 Kanawha Blvd E.  
Charleston, WV 25305



USPS CERTIFIED MAIL™



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**Mac Warner**  
Secretary of State  
State of West Virginia  
Phone: 304-558-6000  
886-767-8683  
Visit us online:  
[www.wvsos.com](http://www.wvsos.com)

ALLSTATE INSURANCE COMPANY  
C. T. Corporation System  
5098 WEST WASHINGTON STREET  
SUITE 407  
CHARLESTON, WV 25313

**Control Number:** 314130

**Defendant:** ALLSTATE INSURANCE COMPANY  
5098 WEST WASHINGTON STREET  
SUITE 407  
CHARLESTON, WV 25313 US

**Agent:** C. T. Corporation System

**County:** Ohio

**Civil Action:** 23-C-168

**Certified Number:** 92148901125134100003852586

**Service Date:** 10/11/2023

I am enclosing:

**1 summons and complaint**

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your authorized insurance company.

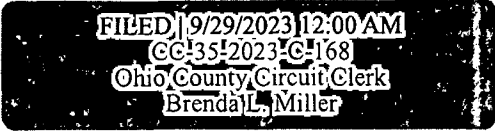
*Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your authorized insurance company as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.*

Sincerely,

A handwritten signature in cursive script that reads "Mac Warner".

Mac Warner  
Secretary of State

# SUMMONS



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA  
**DIANA MEY v. ALLSTATE INSURANCE COMPANY**

Service Type: Secretary of State - Certified - Including Copy Fee

NOTICE TO: ALLSTATE INSURANCE COMPANY, 3100 SANDERS ROAD, NORTHBROOK, IL 60062 /

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY:

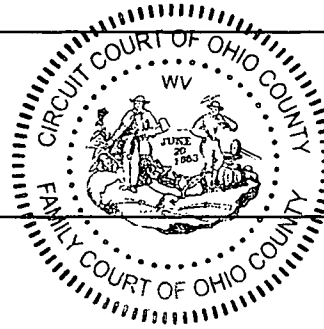
DIANA MEY, 14 APPLEWOOD DR., WHEELING, WV 26003

THE ANSWER MUST BE MAILED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

SERVICE:

9/29/2023 1:01:00 PM  
Date

/s/ Brenda L. Miller  
Clerk



RETURN ON SERVICE:

Return receipt of certified mail received in this office on \_\_\_\_\_

I certify that I personally delivered a copy of the Summons and Complaint to \_\_\_\_\_

I certify that I personally delivered a copy of the Summons and Complaint to the individual's dwelling place or usual place of abode to \_\_\_\_\_, a member of the individual's family who is above the age of sixteen (16) years and by advising such person of the purpose of the summons and complaint.

Not Found in Bailiwick

ACCEPTED FOR SERVICE OF PROCESS  
2023 OCT 14 P 4: 32  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Server's Signature



FILED | 9/29/2023 | 12:00 AM  
CC-35-2023-C-168  
Ohio County Circuit Clerk  
Brenda L. Miller

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

DIANA MEY,

Plaintiff,

v.

Civil Action No. \_\_\_\_\_

ALLSTATE INSURANCE COMPANY,

Defendant.

**COMPLAINT**

**PARTIES**

1. The Plaintiff, Diana Mey, is a resident and citizen of Ohio County, West Virginia.
2. Defendant, Allstate Insurance Company is a Delaware limited liability company with its corporate headquarters located in Northbrook, Illinois.

**JURISDICTION AND VENUE**

3. Venue is proper in this Court pursuant to W.Va. Code § 56-1-1 because the acts complained of herein transpired in Ohio County, West Virginia where Defendant transacted business.

4. Defendant's conduct subjects them to personal jurisdiction under the West Virginia long-arm statute, W.Va. Code § 56-3-33, because they or those acting on their behalf initiated separate telephone calls to Plaintiff's residential wireless phone numbers (the "Numbers"), beginning with their dedicated West Virginia (304) area code, and thereby intentionally caused her phone to ring in Ohio County, West Virginia for purposes of transacting business in this state; because they caused tortious injury in this state; and because they otherwise engaged in persistent courses of conduct which constitute minimum contacts with this state for purposes of personal jurisdiction.

5. Jurisdiction is proper in this Court pursuant to W.Va. Code § 51-2-2, as the amount in controversy exceeds \$2,500.00.

**THE TELEPHONE CONSUMER PROTECTION ACT (“TCPA”)**

6. In 1991, Congress enacted the TCPA to regulate the explosive growth of the automated calling industry. In so doing, Congress recognized that “[u]nrestricted telemarketing....can be an intrusive invasion of privacy[.]” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

**The TCPA Prohibits all Automated Calls to Protected Numbers**

7. The TCPA makes it unlawful “to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned to a...paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.” *See* 47 U.S.C. § 227(b)(1)(A)(iii).

8. Congress singled out these services for special protection either because Congress realized their special importance in terms of consumer privacy and therefore protected them (as in the case of wireless phones), or because the numbers are assigned to services for which the called party is charged, thus shifting the cost of automated or prerecorded messages onto consumers. *See Barr v Am. Ass’n of Pol. Consultants, Inc.* 140 S. Ct. 2335, 2363, (2020) (Gorsuch, J. & Thomas, J. concurring in part and dissenting in part).

9. The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A). *See* 47 U.S.C. § 227 (b)(3).

10. “Non-emergency prerecorded voice or autodialed calls to [the destinations enumerated in 47 U.S.C. § 227(b)(1)(A)] are permissible only with the prior express consent of the called party.”

**Factual Allegations Concerning Allstate**

11. Defendant Allstate Insurance Company (“Allstate”) engages in widespread unsolicited telemarketing to promote the sale of its insurance products to consumers throughout the United States, including West Virginia.

12. Allstate engages insurance agents across the country to conduct that telemarketing on its behalf and authorizes those insurance agents to place telemarketing calls on Allstate’s behalf and subject to Allstate’s control, including calls to numbers registered on the National Do-Not-Call Registry List.

13. Allstate is extensively involved in the operations of its insurance agents.

14. Allstate requires its insurance agents to follow detailed standards.

15. Allstate sets standards its insurance agents must follow.

16. Allstate has the ability, at any time without prior notice to its insurance agents, to change the standards its insurance agents must follow.

17. From time to time, Allstate changes the standards its insurance agents must follow.

18. Allstate has the right to monitor its insurance agents’ compliance with Allstate’s standards and terminate the agency relationship for noncompliance.

19. Allstate sets new customer growth targets for its insurance agents.

20. Allstate monitored and periodically assessed its insurance agents’ performance.

21. Allstate authorized its insurance agents to hire certain telemarketing vendors that Allstate expressly approved (“Allstate Approved Vendors”) to act as sub-agents and place the

telemarketing calls on Allstate's behalf and subject to Allstate's control, including telemarketing calls to numbers registered on the National Do-Not-Call Registry List.

22. Prior to granting approval, Allstate investigated the telemarketing practices of the Allstate Approved Vendors and approved of those practices.

23. At all relevant times, Allstate was aware that the Allstate Approved Vendors placed telemarketing calls promoting Allstate's insurance products and Allstate approved that conduct.

24. At all relevant times, Allstate was aware that Allstate Approved Vendors placed telemarketing calls to numbers registered on the National Do-Not-Call Registry List and Allstate approved that conduct.

25. At all relevant times, Allstate was aware that the Allstate Approved Vendors placed telemarketing calls to persons who had not provided Allstate with express written consent to receive such calls and Allstate approved that conduct.

26. It was common for Allstate to discuss the Allstate Approved Vendors with its insurance agents during meetings with its insurance agents.

27. Allstate set up meetings between its insurance agents and the Allstate Approved Vendors for the vendors to pitch their services. Allstate invited its insurance agents to attend those meetings, and Allstate participated in those meetings.

28. Allstate's insurance agents maintained interim control over the telemarketing conduct of the Allstate Approved Vendors for calls promoting Allstate's insurance products.

29. The insurance agents specified to the Allstate Approved Vendors the geographic parameters for the leads they could telemarket to, the specific type(s) of Allstate insurance to promote, the number of leads to generate, and the times in which to call.

30. The Allstate insurance agents had the right to terminate their relationship with the Allstate Approved Vendors.

31. The Allstate insurance agents had the ability to make interim changes to the call specifications.

32. The Allstate insurance agents changed various call specifications from time to time.

33. The Allstate insurance agents sold Allstate insurance policies to leads generated by the illegal telemarketing calls placed by the Allstate Approved Vendors, thereby enlarging Allstate's customer base, and insurance premiums were collected for those insurance policies.

34. When an Allstate insurance agent sells an Allstate insurance policy as a result of illegal telemarketing calls and a premium is collected on that policy, Allstate receives a portion of the premium and the Allstate insurance agent receives a portion of the premium.

35. Allstate knowingly accepted the benefits of the illegal telemarketing calls, both in the form of advertising benefits that Allstate obtained during the calls themselves and in collection of premium payments resulting from any sales made from those calls.

36. This is not the first lawsuit against Allstate alleging TCPA violations that arise from calls placed by an Allstate Approved Vendor. Indeed, Allstate previously settled a class action concerning calls placed by one such vendor. See 19-cv-0662 (Gebka v. Allstate Insurance Company).

37. Accordingly, Allstate has been on notice since at least 2019 that the Allstate Approved Vendors are violating the TCPA on Allstate's behalf, yet Allstate has allowed the violations to continue.

#### **Factual Allegations Concerning Mey**

38. Plaintiff's residential wireless telephone Numbers, 304-242-XXXX and 304-281-XXXX and 304-280-XXXX had been registered on the National Do Not Call Registry List for at least 30 days prior to the calls at issue.

39. Plaintiff has never provided Defendant nor their agents express written consent to call her Numbers, nor does she have an established business relationship with Defendant.

40. On October 16, 2019 at 1:24 p.m. Mey answered a call from 304-242-4160 to 304-242-XXXX. The caller "spoofed" this call by transmitting phony caller identification information to disguise the true source of the call. When Mey answered the call, there was a momentary pause, followed by a "bloop" sound indicative of the use of an automatic telephone dialing system ("ATDS") before she spoke to "Shawn Parker" who represented that he was calling from "US Savings Center." After asking a series of scripted questions related to auto insurance, Shawn represented that all agents were busy and told Mey he would call back. Because the identity of the beneficiary of the call had not yet been conclusively identified, Mey continued to engage with the caller.

41. On October 16, 2019 at 3:25 p.m. Mey received a call from 304-242-5033 to 304-242-XXXX. The caller "spoofed" this call by transmitting phony caller identification information to disguise the true source of the call. When Mey answered the call, she spoke to Shawn who referenced the earlier 1:24 p.m. call and he transferred Mey to "Linda Brown" with Allstate in Martins Ferry, Ohio. When Mey asked Brown to identify the party who had transferred the call to her, for some unknown reason, the call abruptly disconnected.

42. On October 16, 2019 at 3:35 p.m. Mey called 740-633-5746, a number believed to be associated with Allstate agent "Linda Brown" of Martins Ferry, Ohio. During this call Brown provided Mey with the Caller ID 312-234-0781 of the caller who had transferred Mey to Brown.

This number is an apparently “spoofed” Chicago-area number. Mey informed Brown that the call she received for auto insurance was an unsolicited call to her Do Not Call Registry listed phone number.

43. On October 16, 2019 at 4:12 p.m. Mey received a call from 304-216-1612 to her wireless 304-242-XXXX. The caller “spoofed” this call by transmitting phony caller identification information to disguise the true source of the call. Because Mey was unable to answer this call, it was routed to her answering machine which recorded a momentary pause followed by a “bloop” sound indicative of the use of an ATDS, and a male identifying himself as “Ben Gleason” from “Insurance Care Center”.

44. On October 16, 2019 at 6:23 p.m. Mey received a call from 304-281-XXXX to her wireless 304-242-XXXX. The caller “spoofed” this call with one of Mey’s wireless Numbers to disguise the true source of the call. When Mey answered, the agent identified himself as “Shawn Parker” from “National Savings Center.” Shawn represented that he was the same agent who had called Mey earlier that day. When Mey told him that her phone number was listed on the Do-Not-Call Registry List and requested the name of his company, he disconnected the call.

45. On or about the first week in November 2019 Mey sent an email to Allstate attorney Michele Shuster. Mey informed Shuster she had received auto insurance marketing calls on behalf of Allstate on October 16, 2019 to her Do Not Call Registry listed Number.

46. On December 3, 2019 at 11:11 a.m. Mey received a call from 304-203-111 to 304-281-XXXX. The caller spoofed this call by transmitting phony caller identification information to disguise the true source of the call. Because Mey was unable to answer this call, it was routed to Mey’s answering machine which recorded a momentary pause followed by a “bloop” sound

indicative of the use of an ATDS and a male identifying himself as “Jack calling from US Auto Care”.

47. On December 4, 2019 at 10:20 a.m. Mey received a call from 773-230-5877 to 304-242-XXXX. When Mey answered, there was a momentary pause followed by a “bloop” sound indicative of the use of an ATDS and “Mike” from “United Insurance” came on the line. After asking a series of scripted questions related to auto insurance, Mike said he was going to transfer the call and he placed Mey on hold. After waiting on hold for an extended period, Mey hung up.

48. On December 4, 2019 at 10:38 a.m. Mey again emailed Allstate attorney Michelle Shuster. Mey informed Shuster that she had received additional illegal auto insurance marketing calls on behalf of Allstate to her Do Not Call Registry listed Number.

49. On December 9, 2019 at 9:21 a.m. Mey received a call from 304-887-9103 to 304-281-XXXX. The caller spoofed this call by transmitting phony caller identification information to disguise the true source of the call. Because Mey was unable to answer this call, it was routed to her answering machine which recorded a momentary pause followed by a “bloop” sound indicative of the use of an ATDS and a male identifying himself as “Sam” from “US Auto Care”.

50. On January 29, 2020 at 2:53 p.m. Mey received a call from 304-242-8322 to 304-242-XXXX. The caller spoofed this call by transmitting phony caller identification information to disguise the true source of the call. Because Mey was unable to answer this call, it was routed to her answering machine which recorded a momentary pause followed by a “bloop” sound indicative of the use of an ATDS and a male identifying himself as “Sam” from US Auto Care.”.

51. On January 31, 2020 at 2:23 p.m. Mey received a call from 304-242-6566 to 304-242-XXXX. The caller spoofed this call by transmitting phony caller identification information to disguise the true source of the call. Because Mey was unable to answer this call, it was routed



to her answering machine which recorded a momentary pause followed by a “bloop” sound indicative of the use of an ATDS and a male identifying himself as “Zoltar” from “United States Savings Center” and “US Savings Center.”

52. On February 6, 2020 at 11:45 a.m. Mey received a call from 304-242-2377 to 304-242-XXXX. The caller spoofed this call by transmitting phony caller identification information to disguise the true source of the call. When Mey answered, there was a momentary pause, followed by a “bloop” sound indicative of the use of an ATDS before “Jimmy” from “US Auto Care” came on the line. After asking a series of scripted questions related to auto insurance, Jimmy attempted unsuccessfully to transfer the call. Because the identity of the beneficiary of the call had not yet been conclusively identified, Mey continued to engage with the caller.

53. On February 10, 2020 at 9:55 a.m. Mey received a call from 304-242-1456 to 304-242-XXXX. The caller spoofed this call by transmitting phony caller identification information to disguise the true source of the call. Because Mey was unable to answer this call, it was routed to her answering machine which recorded a momentary pause followed by a “bloop” sound indicative of the use of an ATDS and a male identifying himself as “Hector” from “US Savings Center”.

54. On February 24, 2020 at 1:16 p.m. Mey received a call from 912-326-7540 to 304-242-XXXX. When Mey answered, there was a momentary pause, followed by a “bloop” sound indicative of the use of an ATDS before “Jackson” with “US Savings Center” came on the line. After asking a series of scripted questions related to auto insurance, Jackson represented he would have to call back. Because the identity of the beneficiary of the call had not yet been conclusively identified, Mey continued to engage with the caller.

55. On October 6, 2020 at 10:56 a.m. Mey received a call from 703-586-4893 to 304-281-XXXX. When Mey answered, there was a momentary pause, followed by a “bloop” sound indicative of the use of an ATDS before “Max” from “US Auto Care” came on the line. After asking a series of scripted questions related to auto insurance, Max transferred Mey to Cheryl Blankenship. There was an issue with the quality of the call and Blankenship said she would call Mey back. Because the identity of the beneficiary of the call had not yet been conclusively identified, Mey continued to engage with the caller.

56. On October 6, 2020 at 11:05 a.m. Mey received a call from 757-500-5594 to 304-281-XXXX. When Mey answered, Cheryl Blankenship identified herself as an Allstate agent with the Latty Broome agency. Blankenship asked a series of scripted questions in an attempt to sell Mey an Allstate auto insurance policy.

57. While they remained on the phone, Blankenship sent Mey an email containing an “Allstate Personalized Insurance Proposal” that was on Allstate letterhead.

58. Mey advised Blankenship during this call that her Number was on the Do Not Call Registry List and she was not interested in auto insurance.

59. On October 6, 2020 at 11:37 a.m. Mey received a call from 304-442-6818 to 304-242-XXXX. The caller “spoofed” this call by transmitting phony caller identification information to disguise the true source of the call. When Mey answered the call, there was a momentary pause, followed by a “bloop” sound indicative of the use of an ATDS before the caller came on the line. The caller said he was “Chris with US Auto Care” and after asking a series of scripted questions related to auto insurance, attempted unsuccessfully to transfer Mey.

60. On October 6, 2020 at 2:18 p.m. Mey received a call from CID 304-280-9473 to 304-280-XXXX. The caller “spoofed” this call by transmitting phony caller identification

information to disguise the true source of the call. When Mey answered the call, the caller said he was calling from US Auto Care and for some unknown reason, the call abruptly disconnected.

61. On November 5, 2020 Mey emailed Betty Bentivegna, upon information and belief, a representative within Allstate's Executive Compliance Department. Mey advised Bentivegna that she had received illegal marketing calls from Allstate agents to her Do Not Call Registry listed phone Numbers.

62. Plaintiff has never given Defendants or any of their agents express written consent to call the Numbers, nor does she have an established business relationship with any of them.

63. The calls were not necessitated by any emergency.

64. Plaintiff was harmed by these calls. She was temporarily deprived of legitimate use of her telephone and her privacy was improperly invaded. Moreover, they injured Plaintiff because they were frustrating, annoying, were a nuisance and disturbed the solitude of Plaintiff.

65. Upon information and belief, the acts complained of herein were either the direct acts of Defendant or the acts of agents authorized to act on their behalf.

66. As such, Defendant is directly liable as to all Counts ascribed herein.

67. In the alternative, the acts complained of herein were carried out by agents operating for Defendant's benefit, or with actual, implied or apparent authority of Defendant, such that Defendant is vicariously liable as to all Counts ascribed herein.

68. In the alternative, Defendant ratified or accepted the benefits of the acts of their agents as described herein, and are therefore jointly and severally liable as to all Counts ascribed herein.

**COUNT I: VIOLATIONS OF THE TELEPHONE CONSUMER  
PROTECTION ACT ("TCPA")**

**COUNT I: VIOLATIONS OF THE TELEPHONE CONSUMER  
PROTECTION ACT (“TCPA”)**

69. The preceding paragraphs are incorporated by reference herein as if set forth in their entirety.

70. The foregoing acts and omissions of Defendant and/or its affiliates, agents, and/or other persons or entities acting on Defendant’s behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by sending calls to the telephone numbers of Plaintiff using an automatic telephone dialing system (“ATDS”). *See* 47 U.S.C. § 227(b)(1)(A).

71. As a result of Defendant’s and/or their affiliates, agents, and/or other persons or entities acting on Defendant’s behalf’s violation of the TCPA, 47 U.S.C. § 227, Plaintiff is entitled to an award of \$500 in damages for each and every call initiated to her telephone number using an ATDS in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

72. Defendant violated the TCPA, either directly or through the actions of others, by initiating more than one telephone call to Plaintiff in a twelve-month period while her numbers were listed on the National Do Not Call registry. *See* 47 U.S.C. § 227(c).

73. Defendant violated the TCPA, either directly or through the actions of others, by failing to clearly identify themselves during their calls with Plaintiff. *See* 47 C.F.R. § 64.1200 (d) (4).

74. Each of Defendant’s actions, or those of agents operating on their behalf, were done willfully or knowingly.

75. Plaintiff is also entitled to and does seek injunctive relief prohibiting Defendant and/or its affiliates, agents, and/o other persons or entities acting on Defendant’s behalf from violating the TCPA, 47 U.S.C. § 227, by making calls or sending messages, except for emergency purposes, to any number listed on the National Do Not Call Registry.

76. The Defendant's violations were willful and/or knowing.

WHEREFORE, Plaintiff demands from Defendant statutory penalties and damages as provided by law in the amount of \$1,500 per violation, prejudgment and post judgment interest, costs, attorney's fees, and whatever further relief the Court deems appropriate.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

Dated: September 29, 2023

/s/

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Diana L. Mey  
*Plaintiff Pro-Se*  
14 Applewood Drive  
Wheeling WV 26003  
Phone: 304-280-1607  
diana\_mey@comcast.net

FILED 9/29/2023 12:00 AM  
CC-35-2023-C-168  
Ohio County Circuit Clerk  
Brenda L. Miller

IN THE CIRCUIT COURT OF OHIO

CIVIL CASE INFORMATION STATEMENT  
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. \_\_\_\_\_

Plaintiff(s)

Judge: \_\_\_\_\_

DIANA MEY

14 Applewood Dr.  
Wheeling WV 26003

Plaintiff's Phone: 304-280-1607

vs.

Days to Answer

Type of Service

Defendant(s)

30

WV Secretary of State

ALLSTATE INSURANCE COMPANY

Name

Defendant's Phone: 847-402-5000

3100 SANDERS ROAD

Street Address

NORTHBROOK IL 60062

City, State, Zip Code

II. TYPE OF CASE:

- General Civil
- Mass Litigation [As defined in T.C.R. 26.04(a)]
  - Asbestos
  - FELA Asbestos
  - Other: \_\_\_\_\_
- Habeas Corpus/Other Extraordinary Writ
- Other: Telephone Consumer Protection Act
- Adoption
- Administrative Agency Appeal
- Civil Appeal from Magistrate Court
- Miscellaneous Civil Petition
- Mental Hygiene
- Guardianship
- Medical Malpractice

III. JURY DEMAND:  Yes  No CASE WILL BE READY FOR TRIAL BY (Month/Year): 01 / 2025

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS?

Yes  No

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Reader or other auxiliary aid for the visually impaired
- Interpreter or other auxiliary aid for the deaf and hard of hearing
- Spokesperson or other auxiliary aid for the speech impaired
- Foreign language interpreter-specify language: \_\_\_\_\_
- Other: \_\_\_\_\_

Attorney Name: \_\_\_\_\_

Representing:

Firm: \_\_\_\_\_

Plaintiff  Defendant

Address: \_\_\_\_\_

Cross-Defendant  Cross-Complainant

Telephone: \_\_\_\_\_

3rd-Party Plaintiff  3rd-Party Defendant

Proceeding Without an Attorney

Original and 1 copies of complaint enclosed/attached.

Dated: 09 / 29 / 2023

Signature: *Diana Mey*



West Virginia E-Filing Notice

CC-35-2023-C-168

Judge: Ronald E. Wilson

To: ALLSTATE INSURANCE COMPANY  
3100 SANDERS ROAD  
NORTHBROOK, IL 60062

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## NOTICE OF FILING

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IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA  
DIANA MEY v. ALLSTATE INSURANCE COMPANY  
CC-35-2023-C-168

The following complaint was FILED on 9/29/2023 12:00:00 AM

Notice Date: 9/29/2023 1:01:00 PM

Brenda L. Miller  
CLERK OF THE CIRCUIT COURT  
Ohio County  
1500 Chapline Street  
WHEELING, WV 26003

(304) 234-3611  
Brenda.Miller@courtswv.gov