



And The Defense Wins

Published 4-11-12 by DRI

Dina Cox and Rob Baker



DRI members [Dina Cox](#) and [Rob Baker](#) of **Lewis Wagner LLP** in Indianapolis achieved two defense wins recently in companion putative class action cases. In the first case, they obtained summary judgment and order denying class certification on behalf of a telecommunications billing clearinghouse in an alleged “cramming” case, where the plaintiff complained about supposedly unauthorized telephone billing. On appeal, after oral argument to the Seventh Circuit, the court affirmed the district court’s rulings that plaintiff’s actual authorization of the disputed charges on its telephone bill precluded its claims of unjust enrichment and statutory deception, and that the individual issues surrounding each customer’s transaction precluded class certification.

Additionally, the Seventh Circuit agreed with the defense that an alleged violation of Indiana’s anti-cramming regulation could not serve as the factual predicate for plaintiff’s claims because Indiana’s anti-cramming regulation does not apply to billing clearinghouses, which are not telephone companies or billing agents. See *Lady Di’s, Inc. v. Enhanced Services Billing, Inc.*, 654 F.3d 728 (7th Cir. 2011).

In the second case, **Dina Cox** and **Rob Baker** successfully leveraged the voluntary dismissal of a similar class action lawsuit (which alleged RICO violations against a different telecommunications billing clearinghouse), using the Seventh Circuit’s *Lady Di* opinion. This Seventh Circuit opinion establishes some of the first reported favorable law on the application of state anti-cramming regulations and has been recently cited in the denial of certification of similar cramming allegations.

To learn more about DRI, an international membership organization of attorneys defending the interests of business and individuals in civil litigation, visit www.dri.org.