

## FROM THE COURTS

# Navient Suit Claiming It Gave Borrower Headaches to Proceed



SHUTTERSTOCK

A New Jersey federal judge denied Navient's motion to dismiss a plaintiff's suit that alleges the company called her 881 times in an 11-month period, causing headaches and emotional distress.

by Charles Toutant

Accused of calling a New Jersey debtor as many as 10 times a day, student loan servicer Navient Solutions lost a bid for summary judgment on liability for common-law intrusion on seclusion.

A federal judge in Camden, New Jersey, denied Navient's motion to dismiss Yolanda Polhill's suit, which alleges that the company called her 881 times in an 11-month period and that the calls gave her headaches and emotional distress.

Summary judgment is not warranted on the intrusion on seclusion claim because the facts in the case are largely disputed, U.S. District Judge Karen Williams ruled.

The parties agree that Navient began phoning Polhill in May 2017, and that the calls continued until around January 2019, Williams wrote. But parties dispute the number, frequency and timing of calls and Polhill's requests to no longer receive calls, Williams said.

In addition, although Polhill set her phone to vibrate for incoming calls and kept it in her purse during the workday, the parties disagree about whether the calls were distracting, with Polhill claiming she was reprimanded by her supervisor for answering the phone to ask Navient to stop calling her, Williams wrote.

Also, Navient claims that Polhill's headaches continued even after it stopped calling her, while she argues that the headaches ended when Navient's calls stopped. And while Polhill claims that she revoked consent to receive calls from Navient four times, it said it called her number but cannot be sure it was speaking with her.

The case stems from a \$6,000 student loan that Polhill co-signed for her brother in 2004.

Navient cites *Rush v. Portfolio Recovery Associates*, a 2013 case from the District of New Jersey, to support its assertion that Polhill's claims fail. Navient asserted that *Rush* requires a large number of calls over a short period to make a showing of intrusion on seclusion. Navient claims that it made fewer than one call per day to Polhill, and that she answered fewer than 10 calls, and such facts don't rise to the level of tortious conduct. Navient also asserts that Polhill can't show actual damages from the case because she did not present an expert opinion finding that the calls gave her headaches.

Polhill says the question of whether persistent calls become offensive after

the caller has been told to stop is a question for the jury. She says she always suffered from minor headaches related to her menstrual cycle, but she did not suffer from stress-related headaches until the Navient calls began and those headaches ceased when the calls stopped. Navient, for its part, says the standard for liability from the *Rush* case has not been reached because the plaintiff has not alleged extreme behavior such as prying into her personal affairs or attacking, abusing or insulting her.

Williams found that questions of fact preclude summary judgment, citing a New Jersey Supreme Court ruling from 1977, *Stengart v. Loving Care Agency*, when she wrote that "[o]ne who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person."

Williams added that in evaluating claims for intrusion on seclusion, New Jersey courts rely on the Restatement (Second) of Torts, which said with regard to phone calls, "[T]here is no liability for ... calling [a plaintiff] to the telephone on one occasion or even two or three, to demand payment of a debt. It is only when the telephone calls are repeated with such persistence and frequency as to amount to a course of hounding the plaintiff, that becomes a substantial burden to his existence, that his privacy is invaded."

Williams wrote that the facts in the present case are different from what was presented in *Rush*, where the court found that the defendant's conduct was not highly offensive.

In *Rush*, the defendant contacted the plaintiff up to five times a day, over a four-month period. The plaintiffs in *Rush* never answered the phone or spoke with the defendant, and the defendants never left a voice message.

In the present case, Navient began calling Polhill in May 2017 and ceased in or around January 2019. Unlike *Rush*, Polhill claims she asked Navient to cease calling her four different times, that she received more than 800 calls and she sometimes received as many as 10 calls per day. Navient does not concede these facts.

**Charles Toutant is a litigation writer for the New Jersey Law Journal, an ALM affiliate of the Daily Business Review. Contact him at [ctoutant@alm.com](mailto:ctoutant@alm.com).**



## CITY OF DORAL NOTICE OF ZONING WORKSHOP

All residents, property owners and other interested parties are hereby notified of a **Zoning Workshop** on **Thursday, January 12, 2023 at 6:00 p.m.** The Meeting will take place at the City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166.

The following application will be presented:

**HEARING NO.:** 23-01-DOR-04

**APPLICANT:** Bridge Point Doral 2700, LLC (the "Applicant")

**PROJECT NAME:** Bridge Point Retail Parcel

**PROPERTY OWNER:** Doral Farms, LLC

**LOCATION:** Southwest corner of the intersection of NW 107 Avenue and Doral Boulevard/ NW 41 Street

**FOLIO NUMBER:** 35-3030-000-0020

**SIZE OF PROPERTY:** ±11.6412 acres (General Use to Corridor Commercial) and ±16.0994 acres (General Use to Private Parks and Recreation). The overall size of the property is ±175 acres.

**FUTURE LAND USE MAP DESIGNATION:** Office Residential and Business

**ZONING DESIGNATION:** General Use District (GU)

**REQUEST:** The Applicant is requesting a zoning map amendment for approximately 11.6412 acres of the overall property from General Use (GU) zoning district to Corridor Commercial (CC) zoning district and ±16.0994 acres of the overall property from General Use (GU) zoning district to Private Parks and Recreation zoning district.

Location Map

