

Invasion of Privacy Exclusion in D&O Policy Bars Coverage for Alleged TCPA Violations

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The United States District Court for the Central District of California has held that an invasion of privacy exclusion in a D&O policy barred coverage for a claim alleging violations of the Telephone Consumer Protection Act (TCPA). *LAC Basketball Club v. Fed. Ins. Co.*, No. 2:14-cv-001113-FAF-FFM (C.D. Cal. Feb. 14, 2014).

The policyholder, a professional basketball organization, was sued for negligent and willful violations of the TCPA after it allegedly sent “spam” advertisements via text message to numerous individuals. The policyholder tendered the suit under its D&O policy, but its insurer denied coverage on the basis that the policy barred coverage for any claim “based upon, arising from, or in consequence of . . . invasion of privacy.” After disputing the denial, the policyholder filed a coverage action against its insurer.

Ruling on the insurer's motion to dismiss, the court held that the invasion of privacy exclusion barred coverage for the underlying suit. First, the court analyzed TCPA case law from the Ninth Circuit, which discussed the relationship between the statute and the privacy interests it was enacted to protect. Then, in light of that case law, the court ruled that the privacy exclusion in the D&O policy “plainly” applied because the broad phrase “invasion of privacy” in turn “encompass[ed] TCPA claims.” The court rejected the argument that the exclusion did not apply given that “invasion of privacy” is not an element of a TCPA claim, observing that “‘invasion of privacy’ need not be included as an element because Congress has already determined that the prohibited behavior, if proved, **constitutes** an invasion of privacy.” (Emphasis in original.) As a result, the court held that there was no coverage under the policy and dismissed the coverage action.