

LA Lakers Not Entitled to Insurance Coverage for Violation of TCPA, Ninth Circuit Holds

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The Los Angeles Lakers sued Federal Insurance Company (FIC) after FIC declined to defend the Lakers in a class action lawsuit alleging violation of the Telephone Consumer Protection Act (TCPA).

The Ninth Circuit affirmed the lower court's decision that the Lakers' directors and officers policy—which excluded privacy claims—did not cover the TCPA claim because a TCPA claim is “inherently an invasion of privacy claim.”

The class action lawsuit alleged that the Lakers violated the TCPA's prohibition against the use of “automatic telephone dialing system(s)” when, during a game, they invited the attendees to send a text message to a specific phone number and which the Lakers sent a response text message. The Lakers promptly asked FIC to defend them against the lawsuit in light of the policy's “Corporate Liability Coverage” obligating FIC to pay for losses resulting from any civil proceeding commenced against the Lakers for a “Wrongful Act.” FIC denied coverage, citing the exclusion for claims “based upon, arising from, or in consequence of ... invasion of privacy[.]”

The Ninth Circuit agreed with FIC that the underlying claims fell under the policy's “broad exclusionary clause” because a TCPA claim is inherently an invasion of privacy claim:

When Congress passed the [TCPA] it sought to protect individuals against invasions of privacy, in the form of unwanted calls (and now text messages) using automatic telephone dialing systems. Congress explicitly stated this purpose in the text of the TCPA. In light of this plainly stated purpose, and the lack of any other indicia of congressional intent in the statute, a TCPA claim is, by its nature, an invasion of privacy claim.

Notably, the concurring opinion stated that given the explicit allegations in the complaint that the plaintiff's privacy had been invaded, the majority opinion “need not hold more broadly that a TCPA claim is inherently an invasion of privacy claim.”

TIP: Since commercial general liability (CGL) insurers have been increasingly adding TCPA exclusions to their policies, companies are increasingly looking to other policies for TCPA coverage. Cyber, directors and officers, and professional liability policies are less likely to contain such exclusions, and these type of insurers are more likely to offer endorsements that explicitly bring TCPA claims within coverage.

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