

Ninth Circuit Rules That “Right To Privacy” Exclusion Relieves Insurer Of Duty To Defend TCPA Suit

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The Ninth Circuit ruled that an insurer is not obligated to defend a Telephone Consumer Protection Act (“TCPA”) suit against the Los Angeles Lakers based on a policy exclusion barring coverage for “right to privacy” claims. *Los Angeles Lakers, Inc. v. Federal Ins. Co.*, 2017 WL 3613340 (9th Cir. Aug. 23, 2017).

The underlying suit alleged that the Lakers violated the TCPA by sending automated text message responses to fans who had sent texts to the team during a game. Federal refused to defend the suit based on a policy exclusion for claims “based upon, arising from, or in consequence of . . . invasion of privacy.” The Lakers filed suit, and a California district court dismissed the action based on the policy exclusion. The trial court reasoned that although the underlying suit did not allege any invasion of privacy claims, the exclusion applied because TCPA claims are “implicit” invasion of privacy claims. A divided panel of the Ninth Circuit affirmed.

Although the exclusion does not reference TCPA claims, the court ruled that TCPA claims fall within its scope as a matter of law. The court held that “invasion of privacy” encompasses intrusions upon one’s seclusion or solitude and is not limited to invasions based on private content. In addition, relying on the legislative intent of the statute, the court concluded that a TCPA claim is inherently and solely an invasion of privacy claim. The court rejected the dissent’s argument that common law privacy claims (which the underlying plaintiff expressly waived) are distinct from statutory TCPA claims and thus that the privacy exclusion does not necessarily bar coverage for the latter, which address more than just privacy concerns (*e.g.*, economic injury, public safety).

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