

“Professional Services” Coverage Extends To Printing Receipts At Self-Service Kiosks, Says California Court

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A California federal district court ruled that professional services coverage extends to claims alleging that FedEx’s self-service kiosks inadvertently printed receipts with customer credit card information. *FedEx Office & Print Serv., Inc. v. Continental Cas. Co.*, No. CV 20-4799 (C.D. Cal. Oct. 20, 2020).

FedEx uses self-service kiosks that offer various services, such as printing, scanning and copying. The kiosks are connected to a payment card scanner, which requires customers to scan their credit cards prior to use. In April 2017, a software update of the scanning devices inadvertently “unmasked” extra credit card digits, which were then printed on kiosk receipts in violation of federal statutory law. Thereafter, consumer class actions against FedEx alleged violations of the Fair and Accurate Transactions Act (“FACTA”).

FedEx argued that the FACTA violations were “Wrongful Acts” resulting from “Professional Services” under its liability policy. Continental did not dispute the assertion of a “Wrongful Act,” but argued that the FACTA actions are not covered because printing a receipt is not a “Professional Service.” Continental cited cases that distinguish between the act of providing a substantive professional service unique to a particular business, and the “separate, administrative act of billing, which is common to all businesses.” The court deemed those cases inapposite for two reasons. First, the Professional Service definition at issue listed a series of services, followed by the phrase “and services related thereto.” The court held that this “modifying language” “substantially broadens the provision’s scope” so as to encompass the printing of a receipt for services rendered. Second, the court emphasized the nature of the professional services provided by the FedEx kiosks, stating:

the line between a billing matter and a rendered service becomes blurrier when the services at issue are not “the physical or intellectual acts of service one commonly associates with doctors or lawyers,” but services are provided by a self-use, multi-function machine that operates only after swiping a credit card. . . . FedEx’s process of printing a receipt is not merely an administrative task inherent to all businesses. Rather it is one part of an integrated process unique to FedEx’s business model in the performance of providing professional services through a self-service, multi-function kiosk.

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