

District Court Finds Advertiser's Insurer Must Indemnify for a TCPA Settlement

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The Northern District of Illinois recently ruled that an advertiser's insurers must indemnify the advertiser for settlement of claims brought under the Telephone Consumer Protection Act (TCPA) where the parties settled in reasonable anticipation of liability and the advertiser's policy with the insurer covered the claims. Several plaintiffs brought a purported class action lawsuit against M&M Rental Center Inc., alleging the company sent unsolicited fax advertisements in violation of the TCPA. The case later settled for \$3.9 million, and M&M turned to its insurers for indemnification for the damages amount. The insurers argued that (1) the TCPA damages were punitive, and thus not covered by M&M's insurance policies, and (2) the settlement was collusively aimed at the insurers, since discovery showed that M&M had inadequate resources to pay the full settlement amount. The court disagreed, finding that the TCPA damages were compensatory, thus falling within the terms of the policy, and further determining that the parties settled in reasonable anticipation of liability for an invasion of privacy under the TCPA. Thus the court concluded that the insurers were obligated to indemnify M&M for the TCPA damages.

Tip: A finding of liability under the TCPA or a settlement of such claims can leave advertisers liable for millions of dollars in damages. Advertisers should carefully review applicable insurance policies and work with their brokers and attorneys to ensure they provide coverage in such instances.

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