

Exclusion for “Violation of Consumer Protection Laws” Bars Suit Alleging Violations of the TCPA

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According to a New York federal district court, coverage for a suit alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA), is barred by a “violation of consumer protection laws” exclusion in a technology, media, and professional liability insurance policy. *Certain Underwriters at Lloyd's, London v. Convergys Corp.*, No. 1:12-cv-08968-CRK (S.D.N.Y. Mar. 25, 2014).

The insured was sued for violations of the TCPA by allegedly making “improper and unsolicited autodialed calls to plaintiff's cellular telephone.” The insurer reserved rights and filed a declaratory judgment action seeking a declaration that the policy did not respond to the suit by operation of an exclusion “[f]or, arising out of or resulting from any actual or alleged . . . violation of consumer protection laws (except for consumer privacy protection laws under Insuring Clause I.C.)[.]” Insuring Clause I.C. provided coverage for “Damages and Claims Expenses . . . for . . . failure by the Insured to comply with that part of a Privacy Policy that specifically . . . provides a person with the ability to assent to or withhold assent for (e.g. opt-in or opt-out) the Insured Organization's collection or use his or her Personally Identifiable Non-Public Information. . . .”

The court first held that the suit fell within the scope of the exclusion because the TCPA is a consumer protection law. Second, the court rejected the insured's argument that the exclusion's exception applied because the TCPA is a “consumer privacy protection law.” The court ruled that the exception must be read in conjunction with the coverage afforded under the referenced insuring clause and found that the suit did not trigger Insuring Clause I.C. because the suit did not actually allege injury flowing from the insured's violation of any privacy policy since it was based exclusively on alleged violations of the TCPA. As such the suit was not “for” the violation of any privacy policy, as required by the policy provisions. According to the court, the insured's position “ask[ed] too much of the word ‘for.’”