

ALERT

Sending Unsolicited Faxes “Is Neither the Rendering Nor the Failure to Render Professional Services”

March 7, 2013

The United States District Court for the District of South Carolina has held that a professional liability policy issued to an insurance agency did not afford coverage for a claim alleging that the insured agency violated the Telephone Consumer Protection Act by sending unsolicited facsimile advertisements. *BCS Insurance Co. v. Big Thyme Enterprises, Inc.*, 2013 WL 594858 (D.S.C. Feb. 14, 2013).

As set forth in the insuring agreement, coverage was triggered by a claim for a wrongful act involving the rendering or failure to render Professional Services. The policy defined “Professional Services” to mean “specialized services rendered [by an insured] to a Client as a licensed ... Insurance Agent.”

The court found that the alleged act of “sending unsolicited faxes to potential clients is neither the rendering nor the failure to render Professional Services” within the scope of the insuring agreement, and therefore concluded that the policy did not respond to the claim. In reaching this conclusion, the court rejected the insured’s arguments that: (1) advertising is “an integral component of an insurance agent’s livelihood” requiring specialized skill and knowledge; and (2) the “substantial nexus” between the faxes and the specialized professional services of an insurance agent made the claim one for wrongful acts “involving” Professional Services. Separately, the court held that even if the alleged conduct did constitute Professional Services, “such Professional Services would not have been rendered to a client.” According to the court, interpreting “‘client’ ... to include potential future clients reads the language of the policy to an absurd result.”

Practice Areas

D&O and Financial Institution Liability
E&O for Lawyers, Accountants and Other Professionals
Insurance
Professional Liability Defense

The court also rejected the argument that the allegations of conversion and demand for damages for lost “employee time” asserted in the complaint triggered the duty to defend, pointing out that that the policy included a provision barring coverage for any claim for “[i]njury to or the destruction of property.”

The opinion is available [here](#).