



Alerts

Fourth Circuit Holds Privacy Exclusion Bars Coverage for Law Firm's DPPA Claim

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Insights for Insurers: Cyber Coverage

The Fourth Circuit today affirmed a district court ruling that the Privacy exclusion in a series of business liability policies bars coverage for a claim arising out of the insured law firm's alleged violation of the Driver's Privacy Protection Act of 1994 (DPPA). *Hartford Cas. Ins. Co. v. Davis & Gleshenen, LLP*, 3:17-cv-00182-DSC (4th Cir., March 10, 2020). The plaintiffs in the underlying case against the law firm were drivers who had been involved in automobile accidents in North Carolina. They alleged that the firm, without their consent, obtained their names and addresses from official accident reports submitted to the Department of Motor Vehicles, and used that information to mail them advertisements for legal services, in violation of the DPPA.

The district court had granted Hartford's motion for summary judgment based on its policies' Privacy and Communications exclusions. The Privacy exclusion barred coverage for personal and advertising injury arising out of the violation of an individual's right to privacy created by any state or federal act, unless the insured would have been liable—even in the absence of such state or federal act. The Communications exclusion precluded coverage for personal and advertising injury arising directly or indirectly from a statute, ordinance, or regulation that prohibits or limits sending, transmitting, communicating, or distributing material or information.

On appeal, the Fourth Circuit had no trouble agreeing with the district court that the firm's claim fell squarely within the Privacy exclusion. The court relied on the reasoning expressed in its prior decision, *Hartford Cas. Ins. Co. v. Ted. A. Greve & Assocs., PA*, 742 F. App'x 738 (4th Cir. 2018) (involving one of the law firm's co-defendants in the underlying action). In that case, the insured law firm argued that the exception to the Privacy exclusion applied because the underlying plaintiffs could potentially state a claim for invasion of privacy under North Carolina common law. The court disagreed, noting that North Carolina courts recognize two types of invasion-of-privacy torts: (1) intrusion upon a person's seclusion, solitude, or private affairs, and (2) appropriation of a person's name or likeness for commercial advantage. Accordingly, under the facts alleged by the plaintiffs against the law firm—obtaining information from public records to facilitate the mailing of advertisements—the court found that the underlying plaintiffs could not state a claim for either type of privacy claim.

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Because the Privacy exclusion applied to the DPPA claim, the court declined to consider application of the Communications exclusion.