



## Alerts

### Seventh Circuit Affirms "Information Laws" Exclusion Precludes Coverage for TCPA and Related Common Law Claims

April 23, 2021

*Insights for Insurers*

The Seventh Circuit has affirmed a ruling by an [Illinois federal district court](#), holding that an "Information Laws" exclusion bars coverage for an insured dental services company's TCPA claim. [Mesa Laboratories, Inc. v. Federal Ins. Co. No. 20-1983 \(April 20, 2021\)](#). Mesa, the insured, had been sued by a dentist for sending unsolicited faxes. The plaintiff alleged that Mesa violated the Telephone Consumer Protection Act (TCPA) and the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA). The plaintiff also asserted claims for common law conversion, nuisance, and trespass to chattels for Mesa's appropriation of the recipients' fax equipment, paper, ink, and toner.

Mesa tendered the claim to its insurer, which declined to provide a defense based on various grounds, including the application of its policy's Information Laws exclusion. That exclusion precludes coverage for "any damages, loss, cost or expense arising out of any actual or threatened violation of ... [the TCPA] ... or any similar regulatory or statutory law in any other jurisdiction." In the subsequent coverage action, the district court agreed that the Information Laws exclusion applied ruling that all of the claims asserted against Mesa—including the common law claims—arose out of the same conduct underlying the statutory claims and consequently fell within the exclusion. The Seventh Circuit affirmed.

In reaching its decision, the court relied on its recent holding in [Zurich Am. Ins. Co. v. Ocwen Fin. Corp.](#), 990 F.3d 1073 (7th Cir. 2021), another TCPA coverage case involving common law claims. In that case, the court stated that when determining if an insurer has a duty to defend, "we compare the factual allegations in the underlying complaint to the relevant policy provisions." Applying that test, the Seventh Circuit concluded that the "arising out of any actual or alleged violation" language of the TCPA exclusion at issue in that case precludes "the underlying *conduct* that forms the basis of the violation of an enumerated law, even if liability for that underlying conduct might exist under a legal theory that is not expressly mentioned in the policy exclusion (e.g., common-law invasion of privacy.)" (emphasis in original).

With regard to Mesa's claim, the court noted that "the alleged conduct underlying each claim was the same: Mesa sent unsolicited fax advertisements to [the plaintiff's] office." Affirming summary judgment for the insurer, the court stated that the "answer is now clear under our recent decision in *Zurich*—the

#### Attorneys

Scott M. Seaman



'arising out of' language subjects the common-law claims to the exclusion, as well." The court explained that the "arising out of" phrase in the Information Laws exclusion "presents a 'but-for' inquiry: if the plaintiff would not have been injured but for the conduct that violated an enumerated law, then the exclusion applies to *all* claims flowing from that conduct regardless of the legal theory used." (emphasis in original).