

Lakers TCPA Suit Covered Despite Exclusion, 9th Circ. Told

By Joe Van Acker

Law360, New York (November 3, 2015, 3:38 PM ET) -- The Los Angeles Lakers told the Ninth Circuit on Monday that Federal Insurance Co. should have to chip in to cover its settlement with a fan who accused the team of spamming him with text messages, claiming that the fan's Telephone Consumer Protection Act class action didn't fall under an invasion-of-privacy exclusion.

The NBA team said a California federal judge accepted an "overly broad" interpretation of the exclusion when she granted Federal's motion to dismiss in April, and it said that even if the exclusion applied, it didn't cover all of the TCPA claims filed by Lakers fan David Emanuel.

Los Angeles Lakers Inc. said Emanuel explicitly sought economic damages, not personal injury damages, undercutting U.S. District Judge Dolly M. Gee's ruling that Emanuel's suit was limited to personal injury claims based on an invasion of his privacy, and therefore excluded from coverage.

Because the suit involved economic damages, the judge was wrong to state that the case centered around the invasion-of-privacy claim, the team said.

"Because invasion of privacy is, as the insurance industry has recognized for 50 years, a form of 'personal injury,' the district court's statement that the plaintiff sought relief based on an invasion of privacy directly contradicts the allegations of the Emanuel complaint," the Lakers said.

Emanuel's other claims, including his allegation that the team had been a public nuisance, involve property rights under California law, which is broad enough to trigger coverage, according to the team.

The Lakers also said Emanuel could even have removed all references to an invasion of his privacy and still potentially have triggered coverage under Federal's policy based on his other claims.

The dispute dates back to 2012, when Emanuel claimed that he received texts from an automatic telephone dialing system after using his phone to put a personal message on the scoreboard at the Staples Center during a Lakers game.

The California federal judge handling Emanuel's suit dismissed the case with prejudice, but the Lakers **agreed to settle** in 2014 after Emanuel appealed to the Ninth Circuit, and sued Federal **later that year**.

Aside from seeking a declaration that Federal had a duty to defend and indemnify the team, the Lakers also accused the insurer of denying coverage in bad faith and told the Ninth Circuit on Monday that

Judge Gee through that claim out without any analysis.

The team said that Federal could have acted in bad faith even if its policy didn't cover Emanuel's suit, alleging that the insurer put its own interests before the Lakers' by failing to properly investigate the TCPA suit and shuffling the team's request for coverage through numerous handlers.

"LAL has sufficiently alleged in its complaint that Federal's conduct, even apart from its denial of coverage, has been both wrong and unreasonable, and has injured LAL's right to receive the benefits promised under the policy," the team said.

Attorneys for the parties didn't respond to requests for comment on Tuesday.

The Lakers are represented by Kirk Pasich and Pamela Mary Woods of Liner LLP.

Federal is represented by Robert M. Traylor of Seltzer Caplan McMahon Vitek.

The case is Los Angeles Lakers, Inc. v. Federal Insurance Company, case no. 15-55777 in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by David Siegel and Gavin Broady. Editing by Jeremy Barker.

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