

News & Insights

Illinois Appellate Court Holds State Farm Has No Responsibility for \$4.9 Million TCPA Judgment

Dykema Secures Favorable Appellate Decision on Issue of First Impression
May 7, 2014

The Second District Appellate Court in Illinois issued a unanimous opinion on May 2, 2014 in favor of Dykema client State Farm Fire and Casualty Co., reversing the Lake County Circuit Court's decision. Dykema Members Michael Borders and Rosa Tumialán represented State Farm.

GM Sign Inc., et al v. State Farm Fire and Casualty Co. (2-13-0593) is the first published state court ruling construing the ISO form of the Distribution of Materials in Violation of Statute Exclusion (commonly referred to as the "TCPA exclusion") under the Illinois law as related to junk fax claims.

The Appellate Court ruled that State Farm had no obligation to defend or indemnify its insured for the tendered complaint involving a stipulated \$4.9 million junk fax class action settlement agreed to by its insured. It held that the *Telephone Consumer Protection Act* (TCPA) exclusion applied to the alternative counts of conversion and consumer fraud and that State Farm had no duty to defend or to indemnify the plaintiff in the underlying suit. Its denial of coverage was not wrongful, the court ruled.

"Fundamentally, the court agreed that the policy exclusion for claims arising directly or indirectly out of actions which violate the TCPA extended to alternative theories premised on the same facts," said Michael Borders, Office Managing Member of Dykema's Chicago office. "We are very pleased with this outcome and believe that this decision may have nationwide ramifications for the insurance industry and for similarly styled TCPA class action cases moving forward."

This case stemmed from a 2010 complaint where GM Sign, Inc. filed suit against State Farm insured Michael Schane and his company, Academy Engraving Company, challenging his practice of faxing unsolicited advertisements. The complaint contained three counts that claimed the defendant's conduct violated the TCPA, constituted common law conversion by consuming paper and toner, and constituted a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. GM Sign and Schane later entered into a stipulated settlement and judgment to be satisfied only from any available insurance. It was only after agreeing to settle that the plaintiff filed an amended complaint for the sole purpose of triggering insurance coverage for the stipulated judgment.

In response to decisions across the country finding that insurance companies had a duty to defend TCPA lawsuits, the insurance industry implemented exclusions into policies beginning in 2006 that expressly exclude coverage of TCPA and other statutory claims. Class action plaintiffs responded by arguing that these exclusions are ambiguous, unlawfully prevent coverage and/or do not otherwise apply to the alternatively pled common law and statutory claims. The *GM Sign* opinion soundly rejected these arguments.

"This is a significant case that other courts will consider when ruling on similar matters," said Tumialán, a member of Dykema's Chicago office. "It is the first published case in Illinois construing the exclusion and among the first to address the scope of a TCPA exclusion nationwide."

Practice Areas

Appellate and Complex Motion Practice

Class Action Defense

Litigation