

Eastern District of New York Liberally Interprets Insurance Policy for the Benefit of the Insured

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US Coachways was sued by James Bull on behalf of a class. The class alleged US Coachways sent the class members unsolicited text messages promoting deals on bus and limousine rentals in violation of the TCPA. US Coachways notified its insurer, Illinois Union Insurance Company (Illinois Union), seeking indemnification under its Miscellaneous Professional Liability Policy (the Policy), but was denied coverage. US Coachways settled the class action claims, and as part of the agreement, US Coachways assigned to the class its right to challenge the denial of coverage and to recover under the Policy. *Id.*

The class and Illinois Union both brought a suit for declaratory judgment on the denial of coverage. These cases were consolidated, and both parties filed motions for summary judgment.

The Policy stated Illinois Union agreed to pay all sums in excess of a \$25,000 retention that US Coachways was legally obligated to pay as damages and claims expenses by reason of a wrongful action. A “wrongful act” was defined as “any actual or alleged personal injury offense committed in the performance of professional services.” “Professional services” were defined as those “solely in the performance of professional services as a bus charter broker for others for a fee” or travel agency operations, which were “services necessary or incident to the conduct of travel agency business.” The question turned to what a “bus charter broker” is considered.

Looking to the dictionary and the Interstate Commerce Commission (ICC) Termination Act of 1995, the court concluded a bus charter broker’s services included advertising bus transportation to specific groups of people. Because US Coachways fell within that definition when it committed the alleged TCPA violations, the court held Illinois Union must cover the claim. Even so, if “charter bus broker” did not cover the services, they were covered under the travel agency operations provisions because the advertisements were necessary or incidental to the conduct of travel agency business as attempted procurement for a fee or commission of travel.

Illinois Union contended the TCPA violations occurred when US Coachways was advertising for itself, not others and the Policy did not cover services that were not “for others” and “for a fee.” The court rejected this argument, stating advertising bus rentals was an “essential part of the bundle of services” US Coachways provided as a bus charter broker and for its “travel agency business.” The advertisements mentioned deals, rentals, and a specific price, which sufficiently demonstrated the services were being offered for a fee. Thus, coverage was required.