iCan Not Narrowly Interpret Policy Exclusions

The Telephone Consumer Protection Act ("TCPA") works to limit telemarketers and is intended to save consumers from those seemingly incessant and unwelcome telephone communications.[1] In Horn v. Liberty Ins. Underwriters, Inc., the Eleventh Circuit Court of Appeals addressed insurance coverage for claims arising out of the invasion of privacy relating to a TCPA claim.[2] Horn confirms that Florida courts will broadly interpret exclusions containing the phrase "arising out of," resulting in less coverage for policyholders.

In the underlying litigation, individuals brought a class action lawsuit against iCan Benefit Group LLC ("iCan"), alleging that iCan violated the TCPA and invaded the plaintiffs' privacy by sending unsolicited text messages without the consent of the recipients. iCan sought defense and indemnification coverage from its insurer, Liberty Insurance Underwriter's, Inc. ("Liberty Insurance"), for the claims brought against iCan in the lawsuit. When Liberty Insurance denied iCan's tender for defense and indemnification, iCan settled the lawsuit. iCan admitted liability and assigned its rights against Liberty Insurance to the class plaintiffs, who then sought indemnification from Liberty Insurance.[3]

However, Liberty Insurance reiterated its denial of coverage, citing a policy exclusion that barred coverage for "any Claim…based upon, arising out of, or attributable to any actual or alleged…invasion of privacy." Accordingly, the district court granted summary judgment for Liberty Insurance, and the Eleventh Circuit affirmed.

In affirming the district court's grant of summary judgment in favor of Liberty Insurance, the Horn court examined three key phrases in the relevant policy exclusion: "claim," "invasion of privacy," and "arising out of." The policy defined the term "claim" as "a civil proceeding against any Insured commenced by the service of a complaint or similar pleading." Therefore, in Horn, because the claim was a civil proceeding against iCan commenced by the service of the class action complaint, this was a "claim" as defined by the policy.[4]

The Court's opinion turned on the meaning of the phrase "invasion of privacy," but the term "arising out of" played a vital role in the interpretation of "invasion of privacy." Florida courts have defined "arising out of" as having a broad interpretation that means "having a connection with."[5] Therefore, if the claim has a connection with invasion of privacy, the lawsuit falls under the policy's exclusion, and coverage is barred.

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[1]Telephone Consumer Protection Act 47 U.S.C. § 227.
[2]Horn v. Liberty Insurance Underwriters, Inc., 998 F.3d 1289 (11th Cir. 2021)
[3]Id. at 1292
[4]Id. at 1294.
[5]See, e.g., Taurus Holdings Inc. v. U.S. Fid & Guar. Co., 913 So. 2d 528, 539 (Fla. 2005) (concluding that the phrase "arising out of" means "'originating from,' 'having its origin in,' 'growing out of,' 'flowing from,' 'incident to' or 'having a connection with.'") (quoting Hagen v. Aetna Cas. & Sur. Co., 675 So. 2d 963, 965 (Fla. 5th DCA 1996)).

Although the policy exclusion listed common law torts that the policy excluded from coverage, the Court stated the policy exclusion was unambiguous and did not interpret "invasions of privacy" to refer to the common law tort. Instead, the Court concluded that the exclusion broadly encompassed all civil proceedings arising out of invasions of privacy. Here, the plaintiffs' complaint alleged iCan "invaded the personal privacy of Plaintiffs" and caused plaintiffs actual harm, including "invasions of privacy that result from the sending and receipt of such text messages."[6] Therefore, the Eleventh Circuit concluded that the plaintiffs' claim that iCan's actions invaded their privacy satisfied the "arising out of" phrase in the policy exclusion, regardless of whether the plaintiffs brought a cause of action for the tort of invasion of privacy.

The dissent, however, considered the majority's opinion to be construed too broadly. The dissent opined that the exclusion was ambiguous, and therefore the insured must be afforded coverage under the policy. The dissent interpreted the exclusion to be limited to common law torts and the term "invasion of privacy" to exclude only claims that plead the tort of invasion of privacy. Further, the dissent disagreed with the majority's analysis because, it argued, adding the phrase or "magic words" in any complaint would bar coverage, and simply removing the phrase would necessitate coverage.[7] Because coverage does not turn on the inclusion of magic words in the complaint, the dissent opined that the majority's opinion reached too far.

The majority rejected the dissenting opinion, stating the dissent failed to consider the phrase "arising out of," which the majority believed to be a critical part of the analysis. According to the majority, a narrow interpretation of "arising out of" would convert "arising out of" to mean "for," which would be inappropriate.[8] Therefore, Liberty Insurance could circumvent indemnification for iCan through a broad interpretation of the insurance policy's liability exclusion.

Horn provides meaningful insight into how Florida courts broadly interpret the phrase "arising out of" in insurance contracts. Despite Florida's public policy against broad interpretations of insurance policy exclusions, courts may rely on the Horn decision to bar coverage where a policy exclusion uses the phrase "arising out of." Thus, Horn serves as a cautionary tale for policyholders, urging policyholders to understand the breadth of their insurance policy exclusions before binding coverage. Likewise, the Horn opinion may encourage insurers to add such broad language to their policy exclusions.

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[6]Horn, 998 F.3d at
[7]Id. at 1294-95.
[8]Id. at 1296.