

Recent Decisions Find In Favor of Insurance Coverage for "Blast Faxes"

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Numerous class action suits have been brought over the past several years under the [Telephone Consumer Protection Act](#) ("TCPA") against entities that fax unsolicited advertisements (so-called "blast faxes") to individuals and businesses. Companies facing such suits in turn have sought insurance coverage under their comprehensive general liability ("CGL") policies for costs incurred defending TCPA suits, and for indemnification of any liability.

While coverage disputes in blast faxing cases have historically yielded mixed results, a series of recent rulings have tilted the scales in favor of policyholders. For example, the Florida Supreme Court decided on January 28, 2010 in [Penzer v. Transportation Ins. Co., No. SC08-2068](#), 2010 WL 308043, that a standard CGL policy provided coverage for a suit brought under TCPA for alleged blast fax activities. While other recent decisions have yielded similar results, *Penzer* is significant because it held that the *plain language* of the insurance policy *compels* coverage.

Despite the holding in *Penzer*, insurers will likely use the lack of unanimity among courts, and the potential for inconsistent results in jurisdictions yet to address the issue, as a basis to deny claims going forward. Policyholders would be well served to not take these denials at face value, but rather should demand the coverage to which they are entitled.

A [client advisory](#) prepared by Kelley Drye & Warren LLP's [Insurance Recovery Group](#) summarizes recent coverage decisions regarding blast faxing, including the *Penzer* decision, and discusses the implications of those cases for policyholders.