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# Denying Coverage Based on Advertising Injury, Court Finds Corporations are Not Persons

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A New York appellate court recently found that a corporation is not the kind of "person" that can suffer a violation of privacy rights for purposes of advertising injury coverage. In *Sportsfield Specialties, Inc. v. Twin City Fire Ins. Co.*, the plaintiff asked its insurers to defend a judgment based on its alleged use and dissemination of another corporation's proprietary information. Sportsfield argued that the judgment fell within its coverage for suits based on "personal and advertising injury," which included "[o]ral or written publication of material that violates a person's right of privacy." In April 2014, the appellate court affirmed an award of summary judgment to the insurers, citing the "the historically personal nature of privacy rights in general." Sportsfield, based in Delhi, New York, hired a competitor's employee who had executed both a non-compete and an electronic rights agreement. The competitor sued for tortious interference, unfair and deceptive trade practices and misappropriation of trade secrets; a North Carolina jury awarded it more than $3.2 million. Sportsfield then sought a defense of that judgment from the issuers of its commercial general liability and umbrella policies. Sportsfield argued that the underlying claims arose from "publication … that violates a person's right of privacy," because "the term 'person' connotes both individuals and corporations." The appellate court did not need to address that argument, because it separately held that the underlying claims fell within "at least one" of the policies' exclusions for personal and advertising injury arising out of (1) an intentional "offense," (2) a "breach of contract," or (3) infringement of a trademark. Alternatively, the court could have addressed Sportsfield's argument by considering whether disclosure of trade secrets (even those belonging to an individual) can actually violate "privacy rights," as opposed to property rights. Instead, without stating that "privacy rights" involve different interests from those a business claims in its trade secrets, the court apparently found that the **connotations** of the word "privacy" affect the word "person" in a way that precludes its application to a corporation. A federal court in Indiana took a similar approach in *Heritage Mut. Ins. Co. v. Advanced Polymer Technology, Inc.*, decided in 2000, after an insurer had refused to defend a patent infringement claim. But the Sportsfield court also cited *FCC v. AT&T Inc.*, a 2011 Supreme Court case that involved the "personal privacy" exemption to the Freedom of

Information Act. In that case, Justice Roberts reasoned in precisely the opposite direction—finding that, in the phrase "personal privacy," the use of **the word "'personal' … suggests a type of privacy evocative of human concerns.**" It is possible that this New York decision will support coverage denials in cases that more closely resemble traditional privacy claims—including suits based on dissemination of embarrassing (but accurate) information.

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