

Verdicts & Settlements

Insurer has no duty to provide coverage for class action

Underlying case involves sending unsolicited faxes

\$0

Invecor, LLC d/b/a AMB Business Supply was sued in a class action filed in U.S. District Court in New Jersey alleging that Invecor had sent unsolicited faxes in violation of federal and state law. AMCO Insurance Company filed a declaratory complaint in Oakland Circuit Court alleging that it had no duty to provide coverage or a defense to Invecor for the claims made in the underlying class action based upon an endorsement exclusion added to the policy excluding coverage for violation of statutes governing emails, faxes, phone calls or other methods of sending materials or information. AMCO established through deposition testimony and affidavits that notice of the change to the policy was provided to the insured's agent prior to the policy renewal.



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The parties filed cross-motions for summary disposition. During the pendency of the declaratory action, the plaintiffs in the underlying class action obtained a judgment against Invecor in the amount of \$17,333,500 in the New Jersey federal court class action. After reviewing the cross-motions for summary disposition and response and reply briefs in the declaratory action,

the court held oral argument and granted summary disposition to AMCO that it had no duty to provide coverage or a defense to Invecor in the underlying class-action suit. The court held that the policy renewal packet provided notice of the endorsement exclusion added to the policy, and that the endorsement was properly filed with the Michigan Insurance Commission, although by statute it did not have to be filed. The court held that the endorsement exclusion was clear and unambiguous and excluded coverage for all of the claims made against Invecor in the underlying federal court class-action lawsuit and that notice was provided to the insured by mailing a copy of the policy renewal packet to the insured's independent insurance agent. The court further held that Sparkle Hill, Inc. failed to provide any evidence to counter the evidence established that notice was properly provided. The class-action plaintiff, Sparkle Hill, Inc. then

Type of action: Declaratory complaint

Injuries alleged: The declaratory complaint was filed to determine that AMCO Insurance Company had no duty to provide coverage or a defense to Invecor, LLC d/b/a AMB Business Supply for claims made against it in an underlying class-action suit pending in U.S. District Court in New Jersey, Sparkle Hill, Inc. individually and as representative of a class of similar situated persons v. Invecor d/b/a AMB Business Supply, in which case the plaintiff has recovered a judgment against Invecor in the amount of \$17,333,500.

Name of case: AMCO Insurance Company v. Invecor LLC, d/b/a AMB Business Supply and Sparkle Hill, Inc., individually and as the representative of a

class of similarly-situated persons

Court/Case no./Date: Oakland County Circuit Court/16-154201-CK/Feb. 1, 2018

Name of judge: Hon. Martha D. Anderson

Demand: AMCO's claim was that it had no duty to provide coverage or a defense.

Judgment amount: \$0

Insurance carrier: AMCO Insurance Company

Attorneys for plaintiff: Michael F. Schmidt, Nathan Peplinski

Attorneys for defendant: Jeffrey A. Berman, Rod M. Johnston

filed a claim of appeal to the Michigan Court of Appeals. The Michigan Court of Appeals panel comprised of Judges Tukel, Jansen and Riordan affirmed summary disposition for AMCO in *AMCO Insurance Company v Invecor, LLC and Sparkle Hill, Inc.* unpublished per curiam decision, Court of Appeals Docket No. 342498 (July 25, 2019), holding that the independent insurance agent was the agent of the insured, that AMCO established that it provided notice of the addition of the exclusion endorsement to the policy issued to AMB by mailing the policy renewal packet to the Patrick Stevens Agency, the independent insurance agent, who was AMB's agent. The court held that Sparkle Hill failed to provide any evidence to rebut the presumption that the packet was delivered. Michael F. Schmidt, counsel for plaintiff, provided case information.

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The court held that Sparkle Hill failed to provide any evidence to rebut the presumption that the packet was delivered.

Michael F. Schmidt, counsel for plaintiff, provided case information.