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The Policyholder Law Firm



When Your Drone Prompts a Violation of Privacy Suit, Will Your Insurance Cover It?

By Mark Garbowski and Jorge R. Aviles

The prevalence of drones continues to increase exponentially as all classes of users — private hobbyists, wedding photographers, real estate agents, corporate giants — assemble flotillas to entertain, market, and provide new and enticing business offerings.

Given the rapid rise of drone use, private citizens and businesses alike have understandably grown concerned that these new technologies hovering in the sky could invade their privacy.

Recently, for example, a Seattle woman, Lisa Pleiss, said she felt violated when she saw a drone hovering outside her apartment window on the 26th floor of her high-rise. Similarly, during filming of the latest *Star Wars* installment, enthusiastic fans used drones to photograph and film the movie set, thereby forcing Disney to deploy its own counter-army of drones to patrol the set during current filming of the upcoming *Star Wars: Episode VIII*.

In the past years, several states have specifically outlawed the use of drones to violate privacy, and existing privacy laws can also potentially cover misconduct engaged in by people

and businesses with drones. Thus, under the current legal landscape, companies that use drones may indeed face liability if accused of violations of privacy.

In the face of this potential liability, companies that use drones should therefore ensure they obtain the necessary insurance coverage. Insurance coverage for violation of privacy claims may be available in policies including:

- Commercial general liability (CGL).
- Directors and officers liability (D&O).
- Employment practices liability (EPL).
- Errors and omissions professional liability (E&O).
- Technology and media liability.

The most common form of business insurance coverage is the CGL policy. These policies often define personal and advertising injury to include the publishing or making known of material that violates a person's right of privacy. "Personal and advertising injury" will frequently be defined as "injury, including consequential 'bodily injury,' arising out of one or more of the following offenses: . . . Oral or written publica-

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tion, in any manner, of material that violates a person's right of privacy." The publication requirement could be an impediment to coverage if the underlying claim is based upon the mere fact of the drone encroaching private space. If that requirement is met, however, there is a reasonable chance that insurance companies might have a duty to defend a policyholder under a standard CGL policy.

D&O or EPL policies may also provide coverage for such claims. D&O policies generally provide coverage for claims against directors and officers alleging "wrongful acts." The comprehensive acts covered by D&O insurance may include practices that involve invasion of privacy. Likewise, EPL policies might provide such coverage if the claim is made by an employee. EPL policies usually define the covered conduct as inappropriate employment conduct or wrongful employment acts, and these defined terms might include claims for the invasion of privacy of an employee by a drone.

In addition, companies can also look toward their E&O insurance policies to provide coverage. A professional liability insurance policy

generally provides coverage for claims that occur in the rendering or failing to render professional services. As such, whether or not the alleged violation of privacy claim arises from the insured's professional services will be contingent on the particular nature of the business and how the drones are used within that particular business context. Further, certain professional liability policies provide specific coverage for advertising liability, which might also include the publication of material that violates a right of privacy.

Finally, companies can look to their technology and media insurance policies, which might provide for coverage of acts including claims for infringement of copyrights or trademarks, but also often provide coverage for claims arising from an invasion of privacy.

As drones continue to take to the sky at rapid rates, the number of claims regarding an invasion of privacy caused by their use will inevitably rise with them. Users of drones should therefore be vigilant of such potential liability and must be aware of the coverage that insurance policies afford them. ▲

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