



## I'm . . . Too Faxy For the Courts: "Blast Faxers" Face Substantial Uninsured Damages

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In these difficult economic times, businesses are seeking inexpensive, time-efficient ways to market their products and services to prospective customers. Ostensibly as one such alternative, some businesses have resorted to "blast faxing," i.e., sending advertisements *en masse* to prospective customers' fax machines.

When evaluating whether blast faxing would be a prudent marketing tactic, among other factors, businesses should be aware that blast faxing might subject them to protracted litigation, civil liability, and considerable uninsured damages. So, what was initially conceived as an inexpensive and time-efficient marketing campaign could ultimately become an incredibly costly marketing campaign:

With certain limited exceptions, the Telephone Consumer Protection Act, 47 U.S.C. § 227 (2005), provides that it is unlawful for anyone in the United States to send an unsolicited advertisement to another person's fax machine. Most states have enacted similar laws. These laws can subject businesses to civil liability and substantial monetary damages -- and indeed, blast faxing has led to many class-action lawsuits and multi-million-dollar judgments and settlements.

In an effort to avoid or mitigate the cost of those judgments and settlements, some businesses have tendered the judgments and settlements to their insurance companies. However, many courts have declared that insurance policies do not cover damages resulting from blast faxing. Most recently, in *Cumberland Mut. Fire Ins. Co. v. Express Products, Inc.*, 2011 WL 4402275 (E.D. Pa., September 22, 2011), a federal court declared that a general liability insurance policy did not cover an \$8 million judgment against a business that had engaged in blast faxing. So, when evaluating the costs and risks associated with blast faxing, businesses should not necessarily assume that their insurance policies would cover the costs associated with a lawsuit, settlement, or adverse judgment.

In sum, under certain limited circumstances, blast faxing could conceivably be a prudent, cost-effective, and lawful marketing tactic. But, before any business resorts to blast faxing, it should note: You take the good. You take the bad. You take them *both*. And there you have the fax of life.