

Liberty Mutual Needn't Defend In Phone Reselling Scam Suit

By **Ryan Boysen**

Law360, New York (March 29, 2017, 3:18 PM EDT) -- A Liberty Mutual unit doesn't have to defend a phone reseller accused of scamming Sprint, a Maryland federal judge ruled on Wednesday, saying that the allegations don't constitute "implied disparagement."

Sprint is suing Unwired Solutions Inc., which does business as Linq Services Inc., for allegedly applying for subsidized phones from Sprint, unlocking them and reselling them for use with other carriers. Baltimore-based Linq said the case amounted to a claim that it had disparaged Sprint — which would have been covered under its policy with Ohio Security Insurance Co. — but Judge Catherine S. Blake begged to differ.

"It is not enough ... to claim that Linq promotes its services on its website, and those services have the effect of damaging Sprint's reputation," Judge Blake wrote in her opinion. "A mere allegation of reputational harm does not establish disparagement."

Linq argued, among other things, that the underlying suit alleges it portrayed its phones as equivalent to Sprint's on its site, "which implicitly disparaged Sprint," the opinion said. But Judge Blake basically said that argument doesn't hold water, because Linq's phones are Sprint's phones.

The case law dealing with that type of argument in insurance disputes only applies when a company is comparing its product to that of a competitor — "precisely what is absent here," Judge Blake said.

"In sum, the Sprint action does not allege the publication of disparaging material," the opinion said.

Sprint sued Linq in 2015, one of a handful of similar suits filed against phone resellers, alleging that they took advantage of the subsidies Sprint offers new customers for its phones by setting up phony customer accounts. The resellers then unlocked the phones' software and resold the phones for full price to customers of other wireless networks, Sprint says.

Linq had a policy with Ohio Security at the time that covered "personal and advertising injury" arising out of "oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services."

When Linq asked Ohio Security to defend it in the Sprint suit however, Ohio Security refused, saying that Sprint's allegations didn't constitute implied disparagement and that it needed more facts. Linq sued

Ohio Security in February 2016, seeking to force it to defend Linq in the Sprint action. Ohio Security moved to dismiss the suit in January.

Judge Blake said there's a possibility Ohio Security may still have a duty to indemnify Linq even though it doesn't have a duty to defend, and said Linq was free to file another suit seeking indemnification once the Sprint suit has concluded.

Representatives for Linq and Ohio Security didn't immediately respond to requests for comment on Wednesday.

Linq is represented by Barry I. Buchman of Gilbert LLP.

Ohio Security is represented by Matthew O. Sitzler, Matthew C. Wolfe and Cary Silverman of Shook Hardy & Bacon LLP.

The case is Unwired Solutions Inc. d/b/a LINQ Services Inc. v. Ohio Security Insurance Co., case number 1:16-cv-00405, in the U.S. District Court for the District of Maryland.

--Editing by Stephen Berg.