

BAD FAITH BLOG

Bad Faith Claims in Indiana May be Dismissed when the Facts Alleged Clearly Exclude Coverage

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Summary: The Seventh Circuit Court of Appeals, applying Indiana law, considered an insurer's duty to defend under a commercial general liability policy. The insured sued its insurer in the Southern District of Indiana for breach of contract and bad faith and sought a declaratory judgment that the insurer had a duty to defend. Since the complaint did not allege facts which would establish coverage, the District Court's dismissal was affirmed.

Defender Sec. Co. v. First Mercury Ins. Co.

Defender Security Company, the insured, made a claim on its CGL policy issued by First Mercury Insurance Company arising out of a class action lawsuit against Defender. In the lawsuit, the plaintiffs alleged that phone calls were recorded without the knowledge or consent of the caller in violation of California law.

Defender's CGL policy only provided coverage for the underlying class action if the recorded calls were "published." Once the court determined that the term as used in the policy required a publication of the calls to third persons to involve coverage, the bad faith question became simple. Like many other states, an Indiana insurer's duty to defend is determined by the pleadings. Since Defender failed make any allegation of publication, the complaint did not set forth facts that, even if proven, would establish coverage. Thus, the complaint itself demonstrated there was no coverage. Because there was no coverage, First Mercury could not act in bad faith by refusing to defend the insured because the duty to defend was never even triggered. For that reason the dismissal of all claims was proper.

By Brett Simon

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