

Insurer Must Defend Nuisance Claim Against Landfill Operator, Says Indiana Court (Insurance Law Alert)

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An Indiana district court ruled that an insurer was obligated to defend a nuisance suit against its policyholder, finding that the claims alleged a covered occurrence. *Savers Prop. & Cas. Ins. Co. v. Rockhill Ins. Co.*, 2022 WL 9461874 (S.D. Ind. Oct. 14, 2022).

Residents of a town filed a class action lawsuit, seeking injunctive relief and monetary damages based on the policyholder's allegedly negligent and intentional conduct in operating its landfill. The complaint alleged that the improper construction and maintenance of the landfill resulted in the release of noxious odors, pollutants and contaminants in the surrounding area.

The court concluded that the complaint alleged an "occurrence," defined by the policy as "an accident, including continuous repeated exposure to substantially the same general harmful conditions." In so ruling, the court rejected the insurer's contention that the alleged damage at issue was caused by a professional error or omission, and thus outside the scope of general liability coverage. The court explained: "The Underlying Plaintiffs are not alleging a failure to perform a contractual duty or failure to meet a contractual standard of care; they are alleging a breach of the duty not to create a nuisance that interferes with the Underlying Plaintiffs' use and enjoyment of their property."

The court also ruled that the professional services exclusion did not relieve the insurer of its duty to defend. Under Indiana law, a professional service means "any business activity . . . which involves specialized knowledge, labor or skill which is predominantly mental or intellectual as opposed to physical or manual in nature." The court noted that while some of the allegations in the complaint related to the policyholder's "highly regulated" activities as a "sophisticated landfill operator," other allegations (such as "the simple act of improperly covering the waste with dirt") were acts of basic manual labor rather than professional services.

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