

# Insurer Has No Duty to Indemnify Where Insured Did Not Show Settlement Actually Covered under Policy

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A federal district court recently ruled that an insurer had a duty to defend underlying lawsuits filed against an automobile dealership for allegedly charging customers, without authorization, for the cost of certain insurance, even though such claims were only potentially, rather than actually, covered under the policy. However, the court also held that the insurer did not have a duty to indemnify the dealership for settlement costs because the insured did not show that settlement of the lawsuits was paid for claims actually, rather than potentially, covered under the policy. *TIG Insurance Co. v. Joe Rizza Lincoln-Mercury, Inc.*, 2002 U.S. Dist. LEXIS 4175 (N.D. Ill., Mar. 12, 2002).

In the underlying lawsuits, five different sets of plaintiffs sued an automobile dealership, Joe Rizza Lincoln-Mercury ("Rizza"), on the grounds that Rizza had charged them for certain disability insurance in connection with their purchases of used automobiles without adequately disclosing the existence of those fees or the fact that the dealer benefited in some cases by imposing the fees. Plaintiffs claimed that these actions violated the federal Truth In-Lending Act ("TILA") and the Illinois Consumer Fraud Act, and sought both compensatory and punitive damages.

Rizza had purchased an insurance policy containing a TILA Endorsement covering negligent violations of TILA and an Insurance Agents Errors & Omissions Endorsement covering certain negligent conduct by the insured. Based on these endorsements, Rizza sought coverage for the defense and indemnity of the lawsuits from its insurer, TIG Insurance Company ("TIG"). TIG reserved rights and filed a declaratory judgment action requesting a ruling that it had no duty to defend or indemnify Rizza for settlement of the underlying actions.

In ruling on TIG's request for declaratory relief, the court first observed that claims filed against Rizza would only give rise to a duty to defend if the claims arose out of a failure to comply with TILA and the underlying plaintiffs sought damages under that act. The court, however, concluded that only one of the five lawsuits sought damages directly under TILA. Accordingly, the court held that TIG had a duty to defend one of the five underlying actions based on the TILA Endorsement. The court then examined whether the insurer had a duty to defend the remaining four lawsuits based on the Errors & Omissions Endorsement in the policy. Since the underlying lawsuits alleged that Rizza had recklessly disregarded the truth by imposing certain insurance fees

without authorization, the court held that the underlying plaintiffs arguably alleged a claim of negligent representation, which would fall within the coverage provided by the Errors & Omissions Endorsement. The court therefore held that TIG had a duty to defend suits by the remaining four plaintiffs under this provision.

However, the court concluded that TIG did not have a duty to indemnify Rizza for the settlements of these actions because Rizza did not demonstrate that the settlements were paid for claims actually, rather than merely potentially, covered under the policy. Specifically, the court observed that while TIG disputed that Rizza had settled the cases in order to settle a claim under the policy, "Rizza has not attempted to show nor does it show that it settled the underlying lawsuits in reasonable anticipation of a claim covered under the TIG policy." Accordingly, the court held that TIG had a duty to defend the five lawsuits, but no duty to indemnify for settlement costs paid to resolve the underlying actions.