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David slays Goliath

Everyone loves a David v. Goliath story — even juries in rural Indiana.

Contractor Joseph Radcliff and his company, CPM, confronted State Farm Fire & Casualty Co. after a hailstorm battered the Midwest, generating more than 50,000 claims.

While other companies adjusted their neighbor's claims, State Farm customers were allegedly getting claims denied. In fact, the Indiana Department of Insurance received 425 complaints from State Farm policyholders and a class action was filed on behalf of more than 7,000 policyholders whose claims were denied.

Seeing what he claimed was an alarming pattern, Radcliff advertised his hail-repair services specifically to State Farm customers, took homeowners' claims to the Department of Insurance and contacted the local media.

Following the flurry of negative publicity against the insurance company, Radcliff alleged, State Farm adopted the crisis-management strategy of "attack your accuser." Specifically, State Farm launched a fraud investigation that culminated in criminal charges against Radcliff for insurance fraud, corrupt business influence, criminal mischief and attempted theft.

The criminal charges emanated from State Farm's transmission of its fraud investigation files to the National Insurance Crime Bureau that were later forwarded to the Indianapolis Metropolitan Police Department. The bureau acts as a liaison between insurers and law enforcement authorities and screens suspicious claims submitted by insurers to determine whether they warrant submission to law enforcement.

This fraud investigation file claimed that Radcliff was vandalizing properties and making claims for the repair costs. However, the files that were tendered by State Farm were

incomplete and left out exculpatory evidence favoring Radcliff — including reports on numerous claims that indicated that the claims had merit. Also, State Farm representatives were allegedly encouraging policyholders to file "vandalism" charges against Radcliff alleging he caused the damage on purpose and that this would help the policyholders' State Farm "claims free" discount.

After the charges were filed, Radcliff avoided criminal prosecution by entering an agreement in which he admitted only that there was probable cause for his arrest for misdemeanor criminal mischief.

Now the plot thickens.

State Farm filed a civil lawsuit against Radcliff and CPM for racketeering and insurance fraud. With his reputation and livelihood hanging in the balance, Radcliff filed a counterclaim for defamation.

After six weeks of trial and the testimony of more than 40 witnesses, the jury found in favor of Radcliff and CPM. Jurors awarded \$14.5 million to Radcliff — one of the largest defamation verdicts in one of Indiana's most conservative counties.

State Farm appealed to the Indiana Court of Appeals claiming its communications with the insurance bureau and Indianapolis police were protected by statutory immunity and the common-law, crime-reporting privilege. State Farm failed to prove actual malice by clear and convincing evidence, however, and the appellate court ruled a new trial was warranted on damages based on evidentiary errors and that the damage award was excessive. *State Farm Fire & Casualty Co. v. Radcliff and Coastal Property Management, LLC*, No. 29A04-1111-CT-571 (Ind. Ct. App. April 11, 2013).

The court found it significant that Radcliff was both the only person arrested and the only

complainant against State Farm to the Department of Insurance. In addition, after Radcliff's arrest, State Farm employees contacted the media and urged them to cover the story and sent hundreds of e-mails regarding the arrest.

A State Farm employee also forwarded a picture of a stick figure behind bars to an insurance bureau agent with a note stating "enjoy" and even visited Radcliff's wife's Myspace page. This is some of the evidence that allowed Radcliff to overcome the public-interest privilege for crime reporting. Likewise, the court found that State Farm did not act with the requisite good faith to invoke statutory immunity because there were multiple instances in which it sought new reports from engineers and adjusters that revised the cause of the roof damage from hail to vandalism.

The court also found that Radcliff's admission of probable cause on the misdemeanor criminal mischief charge did not equate to probable cause for the felony counts. According to the court "[t]o hold otherwise would effectively immunize from defamation someone who alleges arson against a simple trespasser." Remarkably, on the question of actual malice, the court rejected Radcliff's argument that he and CPM were private plaintiffs.

Rather, the court held that their actions — in forming a company to repair storm damage, actively seeking State Farm customers and soliciting in affected areas — rendered them "limited-purpose public figures."

This was a hollow victory for State Farm as the court enumerated a mountain of evidence that it ruled clearly and convincingly demonstrated that the defamatory statements were made with knowledge that they were false or with reckless disregard of their falsity.

Apparently, David still has a strong arm. ■

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