

## Litigation Privilege Applies to Breach of Contract Claim

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Indiana has recognized an absolute privilege that protects all relevant statements made in the course of a judicial proceeding from providing a basis for tort liability. At issue in *Rain v. Rolls-Royce Corp.*, Case No. 10-1290, was whether that privilege extended beyond defamation and other similar tort claims to encompass breach of contract claims. This was an issue of first impression in Indiana, and the Seventh Circuit concluded that it did.

In 2005, Rolls-Royce filed suit against Rain and others, alleging misappropriation of intellectual property. The case was settled in 2006 and the settlement contained a non-disparagement provision stating: "None of the Parties will disparage the other."

In 2007, Rolls-Royce filed a RICO claim, which asserted that a co-conspirator was a "Mr. Doe." There was no dispute that the the pseudonym "Mr. Doe" referred to Rain. Also in 2007, Rain attended an expo at which Rolls-Royce hosted an event. Rain was asked to leave by a vice-president of Rolls-Royce. After these events, Rain filed a breach of contract claim against Rolls-Royce, arguing that these events breached the non-disparagement clause of the settlement agreement. The trial court granted partial summary judgment to Rolls-Royce on the lawsuit-related claim based on the litigation privilege. It then ruled for Rolls-Royce after a trial on the expo-related claim. Rain timely appealed.

On appeal, the Court addressed the issue of the litigation privilege first. As stated above, the Court recognized that Indiana has long recognized this privilege, but that no Indiana court had been asked to determine whether it should apply beyond defamation and other similar tort claims. After looking to the decisions of other jurisdictions, the Court decided that Indiana would apply this privilege if doing so "would promote the due administration of justice and free expression by participants in judicial proceedings."

We conclude that it would. The application of the privilege here allows Rolls-Royce to pursue its claims against third parties without fear of future legal liability arising out of its efforts to protect its intellectual property rights. By contrast, the failure to apply the privilege would frustrate the underlying policy by discouraging Rolls-Royce from exercising its fundamental right to resort to the courts to protect its rights.

After resolving this issue, the Court turned to the question of whether Rain's "embarrassment" at being escorted from the expo event could constitute disparagement. The Court discussed that courts usually consider "disparagement" to deal with reputation in the business or commercial context, as opposed to reputation more generally. The commercial and competitive relationships between the parties in this case convinced the Court that the more limited meaning of "disparagement" is what the parties meant in this case, though this need not extend to other contexts involving more personal settings.

### Lessons:

1. An absolute litigation privilege protects all relevant statements made in the course of a judicial proceeding from being actionable.
2. The litigation privilege extends beyond defamation and other similar tort claims to claims for breach of contract.
3. In a breach of contract action, the litigation privilege will apply if applying the privilege would promote the due administration of justice and free expression by participants in judicial proceedings.